1763.

SUPREME COURT OF THE UNITED STATES.

No. 176.

SAMUEL A. WHITE, WILLIAM M. COOK, *et al.*, Plaintiffs in Error,
vs.
ALBERT T. BURNLEY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF TEXAS.

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THE UNITED STATES OF AMERICA,
District Court of the United States,
District of Texas, at Galveston.

At a term of the District Court of the United States of America, begun and held at the city of Galveston, in and for the District of Texas, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-six, present the Honorable John C. Watrous Judge of said Court, Ben. McCulloch, United States Marshal, Samuel D. Hay, United States Attorney, and James Love, Clerk, among other were the following proceedings, to wit:—

ALBERT T. BURNLEY

vs.

SAMUEL WHITE, WILLIAM M. COOK, CHAMBERS ETLER, JOHN H. BALDWIN, HENRY J. HUCK, as administrator of Herman H. Rodgers, and in his own right, JOHN P. O'BRIEN, OLIVER H. STAPP, and THOMAS ROOKE.

Be it remembered that heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and forty-nine, the plaintiff, by his attorneys, filed his petition herein, which is as follows, that is to say:—

Petition.

THE UNITED STATES OF AMERICA,
District of Texas.

To the Honorable John C. Watrous, Judge of the District Court of the United States for the District ot Texas.

The petition of Albert T. Burnley, who is a citizen of the State of Louisiana, complaining of Samuel A. White, William M. Cooke, Chambers Etler, John H. Baldwin, Henry J. Huck, as administrator of Herman H. Rodgers, and in his own right, John P. O'Brien, Oliver H. Stapp, and Thomas Rooke, all of whom are citizens of the State of Texas, respectfully represents—

That heretofore, to wit, on the first day of January, one thousand eight hundred and forty-nine, within the District aforesaid, your petitioner was the lawful owner in fee, and in possession of the undivided three-fourths of a league of land, which said league was granted to Benito Morales by the Government of Mexico, lying and situate in the said District and State of Texas, in the county of Calhoun, on the lagoon of Matagorda, on the western margin, and bounded as

follows, to wit: commencing at a stake upon the deep break of said lagoon, being the fourth and last landmark of the sitio surveyed for Juan Cano, and the first of this survey, thence south forty-five degrees west with the line of said Cano five thousand one hundred and forty varas to the third landmark of the aforementioned Cano and Faustius Alvarado, and following said line with the depth of Alvarado, three thousand five hundred and twenty-one varas to the second landmark of the aforesaid Alvarado, and third of the sitio surveyed for Celeto Garcia; thence with the same line with the depth of Celeto Garcia to his second landmark and third of Pedro Garcia, the line running three thousand five hundred and thirty-seven varas; thence following the said line, with the depth of the aforementioned Pedro Garcia two hundred and sixty varas, where a stake was driven on the plain for the second landmark of this survey; thence with forty-five degrees east eight thousand four hundred and twenty-six varas to the third landmark of Don Francisco Leon, and it serves for the fourth landmark of this survey; thence south forty-five degrees east with the depth of said Leon, two thousand eight hundred and fifty varas to the second landmark of the aforementioned Leon, which serves as the fifth landmark; thence with the line of the aforementioned Leon north forty-five degrees east four thousand six hundred and eighty-seven varas to the first landmark of said Leon, which is the sixth and last landmark of this survey, being a stake driven upon the bank of the aforementioned main lagoon, and south forty-five degrees west at the distance of seventy varas there is a draw-well called John McHenry's well; thence following the bends of the lagoon to the place of beginning; the legal title to which said league of land is in your petitioner and a certain Levi Jones, your petitioner being, as hereinbefore stated, the owner of an undivided three-fourths of the same. And your petitioner says, that being so in the possession of the same, the defendants to this suit, Samuel A. White, William M. Cooke, Chambers Etler, John H. Baldwin, Henry J. Huck, as administrator of Herman H. Rodgers, and in his own right, John P. O'Brien, Oliver H. Stapp, and Thomas Rooke, afterwards, to wit, on the said first day of January, one thousand eight hundred and forty-nine, with force and arms entered upon the said premises of your petition, and him, your said petitioner, they, the said defendants, did then and there forcibly and wrongfully dispossess and eject from his said premises, and they, the said defendants, did then and there so forcibly and wrongfully take and seize possession of the said premises of your petitioner, which is to the damage of your petitioner twenty thousand dollars.

Wherefore an action hath accrued to your petitioner to recover of and from the said defendants his said property and premises above described, and the said sum of twenty thousand dollars for his damages herein.

Your petitioner prays, after this his complaint shall have been heard in due course of law, for the judgment of your Honorable Court

to resolve and place him in possession of his said premises, and for the said sum of twenty thousand dollars against the said defendants for his wrongful injury herein, and for costs, and for all relief to which he may be entitled in the premises.

JONES, BUTLER, and BALLINGER,
Attorneys for Plaintiffs.

And afterwards, to wit, on the sixth day of December of the same year, the defendants hereto filed their answers to the petition of the plaintiff, which said answers are in the words and figures following, that is to say:—

Answer of Samuel A. White.

UNITED STATES DISTRICT COURT.

December Term, 1849.

ALBERT J. BURNLEY
vs.
SAMUEL A. WHITE and others. } Trespass to try title.

And now, at this term, comes the defendant, Samuel A. White, and defends the force and injury when, &c., and says that he is not guilty of the said several supposed trespasses in manner and form as the plaintiff hath thereof alleged against him; and he denies all and singular the allegations and averments in the plaintiff's petition contained. And of this he puts himself upon the country, &c.

J. A. & GEO. W. PASCHAL,
Att'ys for Defendant.

Answer of Chambers Etler.

UNITED STATES DISTRICT COURT.

December Term, 1849.

ALBERT J. BURNLEY
vs.
CHAMBERS ETLER and others. } Trespass to try title.

And now, at this term, comes the defendant, Chambers Etler, and defends the force and injury when, &c., and says that he is not guilty of the said several supposed trespasses in the plaintiff alleged, and he denies all and singular the allegations in the plaintiff's petition contained. And of this he puts himself upon the country, &c.

J. A. & GEO. W. PASCHAL,
Att'ys for Defendants.

Answer of William M. Cook.

UNITED STATES DISTRICT COURT.

December Term, 1849.

ALBERT T. BURNLEY
vs.
WILLIAM M. COOK and others. } Trespass to try title.

And now, at this term, comes the defendant, William M. Cook, and defends the force and injury when, &c., and says he is not guilty in manner and form as the plaintiff hath thereof alleged against him, and he denies all and singular the allegations in the plaintiff's petition set forth and averred. And of this he puts himself upon the country.

J. A. & GEO. W. PASCHAL,
Att'ys for Defendant.

Answer of John H. Baldwin.

UNITED STATES DISTRICT COURT.

December Term, 1849.

ALBERT J. BURNLEY
vs.
JOHN H. BALDWIN and others. } Trespass to try title.

And now, at this term, comes the defendant, John H. Baldwin, and defends the force and injury when, &c., and says that he is not guilty of the said several supposed trespasses in the plaintiff's petition alleged, and he denies all and singular the allegations and averments in the plaintiff's petition set forth. And of this he puts himself upon the country, &c.

J. A. & GEO. W. PASCHAL,
Att'ys for Defendants.

Answer of Henry Huck.

UNITED STATES DISTRICT COURT.

December Term, 1849.

ALBERT J. BURNLEY
vs.
HENRY HUCK, Adm., &c.,
and in his own right. } Trespass to try title, &c.

And now, at this term, comes the defendant, Henry Huck, as ad., and in his own right, and defends the force and injury when, &c., and says that he is not guilty of the said several supposed trespasses in manner and form as the plaintiff hath thereof alleged against him, and he denies all and singular the allegations in the plaintiff's

petition set forth and averred; and of this he puts himself upon the country, &c. J. A. & GEO. W. PASCHAL,
Atty's for Defendant.

Answer of John P. O'Brien.

UNITED STATES DISTRICT COURT,
December Term, 1849.

ALBERT T. BURNLEY
vs.
JOHN P. O'BRIEN. } Trespass to try title, &c.

And now, on this day comes the defendant, John P. O'Brien, and defends the wrong and injury when, &c., and says that he is not guilty of the said several supposed trespasses in manner and form as the plaintiff hath complained against him, and he denies all and singular the allegations and averments in the plaintiff's petition contained; and of this he puts himself upon the country, &c.
J. A. and GEO. W. PASCHAL,
Atto's for Def'ts.

Answer of Oliver H. Stapp.

ALBERT T. BURNLEY
vs.
OLIVER H. STAPP and others. } Trespass to try title.

UNITED STATES DISTRICT COURT,
December Term, 1849.

And now, on this day comes the defendant, Oliver H. Stapp, and defends the force and injury when, &c., and says that he is not guilty of the said several supposed trespasses in manner and form as the plaintiff hath in his said petition thereof alleged against him, and he denies all and singular the allegations in the plaintiff's said petition contained; and of this he puts himself upon the country, &c. J. A. and GEO. W. PASCHAL,
Atto's for Def't.

Answer of Thomas Poole.

UNITED STATES DISTRICT COURT,
December Term, 1849.

ALBERT T. BURNLEY
vs.
THOMAS POOLE and others. } Trespass to try title, &c.

And now, at this term comes the defendant, Thomas Poole, and

defends the force and injury when, &c., and says that he is not guilty of the said several supposed trespasses in manner and form as the plaintiff hath thereof alleged against him, and he denies all and singular the allegations in the plaintiff's petition set forth and averred.

J. A. and GEO. W. PASCHAL,
Atto's for Def'ts.

And afterwards, to wit, on the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty, the Court here made an order in this cause, in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } No. 213.

Continued by consent.

And afterwards, to wit, on the sixteenth day of April of the same year, the Court here made an order in this cause, in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE *et als.* } Continued.

And afterwards, to wit, on the twenty-third day of April of the same year, the Court here made an order in this cause, in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE *et als.* } No. 213.

It is agreed that in the above cause, and also in the suit of Burnley *vs.* John H. Brown *et als.*, lately commenced for trespass, the evidence taken in any one case may be used in all the other of said cases, so far as the same is applicable, subject to all other legal exceptions. This agreement is intended to include all the suits at law in favor of A. T. Burnley, against parties in which we are counsel, whether properly numbered as above or not.

JONES, BUTLER & BALLINGER,
Attorneys for Plaintiff.

J. A. and GEO. W. PASCHAL,
Attor. for Defendants.

And afterwards, to wit, on the ninth day of May, of the same year, the Court here made an order in this cause, which is in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } No. 213.

Continued.

And afterwards, to wit, on the twenty-sixth day of June of the same year, came the defendants, by their attorneys, and filed an amendment to their answers herein, which said amendment is in the words and figures following, that is to say:—

Amended Answer.

UNITED STATES DISTRICT COURT:

ALBERT T. BURNLEY
vs.
WILLIAM M. COOK and others.

And now, at this time, come the said several defendants, and for a further amended answer, by leave of the Court first had and obtained, they say *actio non*, because they say that the said plaintiff was not seized and possessed of said league of land in said petition by him therein set forth and described, under and by virtue of a grant from the government of Coahuila and Texas, to the said Benito Morales, in manner and form as the plaintiff hath asserted. On the contrary, these defendants aver in fact, and say that if any such pretended grant was in fact ever made to the said Morales, the same was null and void from the beginning, and inceptive thereof, and never did in fact relinquish the right of the said State of Coahuila and Texas, and of the Republic of Mexico (to the said Morales), of, in, and to said land.

And these defendants in fact say that said pretended grant was void, because the same purports to be made by the commissioner of the Empresario, Martin de Leon; whereas, in truth and in fact, these defendants say that the said land in the said petition described, was not within the colony of said Martin de Leon. And said grant was of land beyond the jurisdiction of the officers making the same, and was without lawful authority in said officers to extend such title.

And further, because these defendants say that the said Morales was not, in fact, a colonist of the said Empresario, Martin de Leon, entitled to receive lands on a headright grant, in accordance with the colonization decrees in such cases made and provided; but, on the contrary, the said Morales never was a free citizen of Coahuila and Texas, but was a poor slave, not domiciliated within said colony;

and said Morales not being such citizen of Coahuila and Texas, falsely and fraudulently represented to the said Martin de Leon, Empresario, and to the said commissioner of said colony, that he was such citizen and head of a family, when in truth and in fact he was not, and by such false and fraudulent representation caused the said grant or concession to be made to him, the said Morales, contrary to the said colonization decrees in such cases made and provided, and therefore these defendants say that if said pretended grant was in fact made, the same was fraudulent, null and void. All of which these defendants are ready to verify, &c.

And, for a further plea in their behalf, these defendants say *actio non*, because they say that if any such pretended grant was ever in fact made, it was fraudulent and void in this, to wit, that no survey of said land was ever made by James Kerr, whose name appears as surveyor, or by any other person; and said pretended grant is of a quantity greatly above one league, to wit, two leagues; and said pretended grant was obtained by the said Morales falsely and fraudulently pretending that said survey had been made when it had not, and that it was of the quantity of one league, whereas it was falsely and fraudulently of the quantity of two leagues or more, and therefore these defendants say that the said pretended grant was absolutely void.

And these defendants further say, that if any such pretended grant was in fact made to the said Morales, the conditions of the colonization decrees, in such cases made and provided, were never complied with by the said Morales; on the contrary, these defendants aver that immediately after the date of said pretended grant, the said Morales abandoned the country and removed from the State of Coahuila and Texas, of which Texas was then a part, and thereby said land, in accordance with the colonization decrees in such cases made and provided, became forfeited to the government, and became and remained a part of the public domain, subject to reappropriation; and this these defendants are ready to verify, &c.

And for a further plea in this behalf, these defendants say *actio non*, because they say that by the fourth article of the National Colonization Decree of Mexico of 1824, and the seventh article of the Colonization Decree of Coahuila and Texas of 1825, the said State of Coahuila and Texas was forbidden and prohibited from colonizing any of the lands and territories within the ten litoral leagues bordering on the Gulf of Mexico, without the consent of the Supreme Executive of Mexico for that purpose first had and obtained: And these defendants in fact say that the said land in the plaintiff's said petition described, is situated within the ten litoral leagues bordering on the Gulf of Mexico, to wit, on Matagorda Bay, to wit, in the county of Calhoun aforesaid: And these defendants in fact say that the consent of the Federal Executive of Mexico, allowing the said Martin de Leon to colonize the said lands, and to grant the same to the said grantee, was never in fact obtained; and

therefore the said grant was from the beginning, and still is, null and void; and this the said defendants are ready to verify, and pray judgment, &c.

And for further plea in this behalf, said defendants say *actio non*, because they say that the mesne conveyances through which the said plaintiff pretends to derive a claim of title from the said Morales, are and were from the beginning null, inoperative, and void, because they say that the said Morales, if he ever had or acquired any title to said league of land, he acquired the same as a colonist, subject to all the conditions, restrictions, and limitations of the colonization decrees of Mexico, and of Coahuila and Texas, in such cases made and provided; and that by the colonization decrees of Coahuila and Texas, he was prohibited from alienating or selling said land until six years from the date of said title, and until a full compliance on the part of said Morales with all the provisions of said colonization decrees prescribed; nevertheless, these defendants say that the said Morales, disregarding said colonization decrees, afterwards, to wit, on the day of A. D. 1838, pretended to sell and convey said land to one Grayson, who was then a citizen of the United States of America, not domiciliated within the Republic of Mexico, and having no right to take and hold said land; and therefore, as well because the said Morales had no right to sell said land as because said Grayson had no right to take, hold, and purchase the same, these defendants say that said conveyance is wholly null, inoperative, and void; and whatever title the said Morales had or held in said land is still outstanding, and remaining in the said Morales; all of which these defendants are ready to verify, and pray judgment, &c.

And for a further plea in this behalf, these defendants say *actio non*, because they say that the said Charles T. Burnley, as in said petition averred, has and holds no other title to said land except by claim of title from said Morales through said Grayson, and by a conveyance by said Grayson, or his representatives, to said plaintiff; and these defendants aver, that at the date of said pretended conveyance to said plaintiff he was an alien to the Republic of Texas, to wit, a native and citizen of the United States of America, and, by the Constitution of the then Republic of Texas, the said plaintiff was not allowed to hold lands except by title derived directly from the Republic of Texas; and these defendants say that the said title was not derived directly from said Republic, and the said pretended conveyance to said Burnley, as well on account of his said alienage as because the same was without authority of law, was wholly inoperative and void; all of which these defendants are ready to verify, and therefore pray judgment, &c.

And for further plea in this behalf, these defendants say *actio non*, because they say that they, and those under whom they hold, have been in the legal and undisturbed possession of said league of land by good and valid title for more than three years, and that the plain-

tiff's cause of action accrued more than three years next preceding the commencement of this suit; and this they are ready to verify, and pray judgment, &c.

And for further plea in this behalf, these defendants say *actio non*, because they say the plaintiff's cause of action accrued more than three years next preceding the commencement of said suit; and this they are ready to verify, and pray judgment, &c.

And for further plea in this behalf, these defendants say *actio non*, because they say that one Samuel A. White and one William M. Cook, two of these defendants, are in possession of said land by virtue of good and valid locations and surveys, made by virtue of valid warrants, headright certificates, and other evidences of right, to appropriate lands in the Republic, now State of Texas, which locations and surveys were made upon said lands in the Victoria Land District before the proper officers, and which gives to them, and those claiming under them, valid and legal title to said land; and these defendants held under said White and Cook, and so these defendants all plead title in themselves and outstanding title in said White and Cook, and to said location and surveys, and to the conveyances of these defendants under them, these defendants beg leave at all times to refer; all of which these defendants are ready to verify, and pray judgment, &c.

J. A. and GEO. W. PASCHAL,
Atto's pro Def'ts.

And these defendants here give notice and suggest to the Court here that they and those under whom they claim were for more than one year next before the commencement of this suit seized and possessed, by valid title, of said league of land, and certain parts and parcels thereof, and that they and those under whom they claim have made valuable improvements thereon, by building certain warehouses, out-houses, dwelling-houses, gardens, fences, and various other improvements of the town of Indianola and the environs and suburbs thereof, of great value, to wit, of the value of two hundred thousand dollars, which improvements and their value they will prove on the trial, and claim the value thereof in accordance with the form of the statutes in such cases made and provided.

J. A. and GEO. W. PASCHAL,
Att'ys for Def't.

And afterwards, to wit, on the tenth day of December of the same year, the Court here made an order in this cause in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE *et als.* } No. 213.

It is ordered that this cause be continued until the next term of this Court, as on affidavit of the plaintiff.

And afterwards, to wit, on the eighteenth day of April, in the year of our Lord one thousand eight hundred and fifty-one, by a general order of Court, this cause was continued.

And afterwards, to wit, on the fourteenth day of May of the same year, the following affidavit was filed and sworn to by the plaintiff's attorney, that is to say:—

Affidavit.

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

A. T. BURNLEY
vs.
SAM'L A. WHITE and others.

W. P. Ballinger, plaintiff's attorney, on oath says that the plaintiff cannot go safely to trial at the present term of Court, for want of material testimony, which consists in the proof of the execution of deeds forming part of plaintiff's claim of title.

That said deeds have been on record for many years, but affiant discovered that the proof of their execution was defective, or, at least, that it presented a question of so much doubt as, in his judgment, to require, for the interest of his client, further proof to be made.

But immediately thereupon affiant gave proper directions for taking a deposition in Louisiana, where one of the deeds was made, to make the necessary proof of its execution, and took such steps, by letter to the agent of said Burnley in New Orleans, as would secure, as affiant believed, the prompt and certain taking of said deposition; but the same has not been returned.

That affiant also inclosed the other deed, by the first mail after he discovered the necessity of further proof, to Dr. Levi Jones, the agent of said Burnley at La Salle, in Texas, with the proper instructions for proving the same; but, owing to the absence of said Jones from home at the time, and to the fact that this Court is in session earlier than was believed would be the case by affiant or by the officers of the Court and bar generally, the said deed is not returned with said proof. That said proof cannot be made from any source at this Court.

That affiant is confident said proof of said deeds can and will be obtained by next Court. That this continuance is not sought for delay, but that justice may be done, to which affiant believes a con-

tinuance essential. That affiant does not remember the names of the subscribing witnesses to said deeds, whose proof was sought, if practicable, to be had.

W. P. BALLINGER.

Sworn to in open Court, and filed May 14th, 1851.

JAMES LERU,
Clerk.

And afterwards, to wit, on the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and fifty-three, the Court here made an order in this cause, in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } No. 213.

Ordered that this cause be continued.

And afterwards, to wit, on the fifth day of January, in the year of our Lord one thousand eight hundred and fifty-four, the Court here made an order in this cause, which is in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } No. 213.

On motion of counsel for plaintiffs and defendants, and by the assent of the Court, it is ordered that this cause be set down for trial on the first day of February next.

And afterwards, to wit, on the ninth day of January of the same year, the Court here made an order in this cause, in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } No. 213.

On motion, it is ordered that the Clerk open the depositions taken *de bene esse*, whether for plaintiff or defendant in this cause, which was accordingly done in open Court.

And afterwards, to wit, on the seventeenth day of January of the

same year, the Court here made an order in this cause, in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } No. 213.

On motion, it is ordered that this cause be continued, as on affidavit of defendants.

And afterwards, to wit, on the twenty-fifth day of February of the same year, the Court here ordered an order in this cause, which is in the words and figures following, that is to say:—

Order of Court.

A. T. BURNLEY
vs.
S. A. WHITE *et als.* } No. 213.

On this day came the parties, by their attorneys, and on their motion it is ordered that the following agreement be entered of record, and form a part of the proof in this cause:—

It is agreed in this case, and the several cases involving the controversies about the Court Leagues, where Burnley is a party, that all the pleas except the general issue be withdrawn, and that under this plea the defendant may prove any fact, they could under any special plea whatever. It is also agreed that the Clerk may issue letters Rogatory directed to any judicial officer in Mexico, requiring the taking of the evidence of such witnesses as either party shall desire to examine on such interrogatories as they shall give due notice of.

It is also agreed that such documentary evidence as shall be duly certified by the proper Secretary of the Mexican Government, transmitted through the government of the United States, may be read in evidence, if pertinent to the matters in controversy. It is also agreed that such documents, pertinent to the cause, as may be certified by the Secretary of the State of Coahuila, under the great seal, may be read in evidence.

It is further agreed that the depositions taken in this case, or hereafter taken, and agreements made, shall apply, so far as pertinent, to Burnley and Porter *vs.* Cook, Baldridge, and others. That in any depositions taken in the above causes within 100 miles of Indianola, under the acts of Congress, or otherwise, notice shall be given to Fletcher S. Stockdale, on the part of plaintiffs, and S. A. White on the part of defendants. All objections are withdrawn to the form or manner of taking the depositions which are on file in the above causes.

It is agreed that the files of documents, &c., respecting the colonies of De Leon, and Power and Hewetson, on file, in other causes in this court, may be read in evidence in this case, so far as material.

W. P. BALLINGER,
Attorney for Plaintiffs.

GEO. W. PASCHAL,
Attorney for Defendants.

And afterwards, to wit, on the same day and year, the Court here made another order in this cause, which is in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others.

On motion of the parties, by their attorneys, it is ordered that the following agreement be entered of record, and form a part of the cause at the hearing.

It is agreed in the above cause, and in the other causes in this court in which Burnley is plaintiff, and we are counsel for the parties respectively, that, during the absence of the Judge, the Clerk of the United States District Court may appoint commissioners on the application of either party, who shall have full right to take testimony to be used in said causes, notice of an application to be given to the opposite counsel for the appointment of a commissioner; in the absence of Judge Paschal, notice to be given to William H. St. John, or Lorenzo Sherwood.

It is further agreed that, in all aforesaid causes, defendants' possession of the premises, as charged in petition, is admitted, and this agreement shall be taken as proof thereof on the trial, except as to defendant Hawley.

It is further agreed that the locations, surveys, and evidences of title of the parties may be proved by certificates from the surveyors of whose offices the same are records. Also papers from the General Land-office may be proved by the certificate of the Commissioner of the Land-office. Also that the copy of the translation of documents respecting De Leon's colony, on file in Burnley *vs.* Brown *et als.*, chancery cause, shall be considered as properly authenticated, to be offered in evidence, subject to correction by a more authentic translation.

W. P. BALLINGER,
Attorney for Burnley.

G. W. PASCHAL,
for all the Defendants but Reuss.

And afterwards, to wit, on the same day and year, the Court here made an order in this cause in the words and figures following, that is to say:—

Order of Court.

A. T. BURNLEY
vs.
S. A. WHITE *et als.* } No. 213.

On motion of parties, by their attorneys, it is ordered that the following agreement be entered of record, and form a part of the cause upon the hearing.

In the above cause, and in the other causes of Burnley in said court, in which we are counsel, it is agreed that the signatures of Fernando de Leon, who acted as commissioner in extending said title to the testimonios, shall be considered as proved, without further evidence of handwriting. The defendants reserve fully the right to contest the validity of the act of the said De Leon, or the sufficiency of his authority as commissioner.

W. P. BALLINGER,
Atto. for Plaintiff.

G. W. PASCHAL,
Atto. for Def'ts.

And afterwards, to wit, on the twenty-fifth day of March, during the same year, the Court here made an order in this cause, which said order is of the words and in the tenor following, that is to say:—

Order of Court.

A. T. BURNLEY
vs.
WHITE and others. } No. 213.

On motion of plaintiff's attorney, it is ordered that the Clerk make publication of the depositions on file in these two causes, which was accordingly done in open Court.

And afterwards, to wit, on the fifteenth day of February, in the year of our Lord one thousand eight hundred and fifty-five, the defendants, by their counsel, filed a suggestion of Death, which is in the words and figures following, that is to say:—

Suggestion of Death.

A. T. BURNLEY
vs.
WHITE and others. } No. 213.

The defendants' attorney here suggests to the Court, and offers to

prove to the Court that the defendants, Baldwin, Etler, O'Brien, and Elam, have departed this life since the commencement of this suit.

GEORGE W. PASCHAL,
Atto. for Defendant.

And afterwards, to wit, on the twenty-sixth day of February of the same year, the defendants by their counsel filed a motion herein which is in the words and figures following, that is to say:—

Motion.

ALBERT T. BURNLEY
vs.
MOORE & LIBBALD.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others.

ALBERT T. BURNLEY and ROYAL A. PORTER
vs.
WILLIAM M. COOK and others.

The plaintiff in these cases moves the Court for an order of survey, to be directed to the District Surveyor of Calhoun County, directing him to survey the Morales and Juan Caño grants, described in the petition of the plaintiff, and also the locations and surveys under which the defendants claim, and the true and accurate boundaries of all said lands. Having ascertained, to make due return of the field-notes and plats of said surveys to this Court.

J. A. and GEO. W. PASCHAL,
Attos. for Defendants.

And afterwards, to wit, on the same day and year, William M. Cook, one of the defendants herein, filed an affidavit for a continuance, which said affidavit is in the words and figures following, that is to say:—

Affidavit for Continuance.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } No. 213.

The defendants in this case say they cannot go safely to trial—

1. For want of the record and proceedings in the Probate Court to establish his right under an administrator's deed to 320 acres of the land in controversy, the title whereof he derives from the plaintiff and others through the administrators of Horace Baldwin, deceased.

2. For want of the conveyance to the German Emigration Company's Agent, by S. A. White, and the claim of title and proof of possession through them down to himself, which deeds and evidences

of possession he can obtain by the next term. That he could have obtained said proofs and papers before this time, but his counsel relied upon the rule of limitations in Jones and Menard, until his arrival in the city. He then wrote to the defendant White, for all the mesne conveyances, but, as he learns from Mr. White, the letter miscarried. That this chain of evidence is material as well on the title as the pleas of prescription, and witness did not know its materiality until he learned from his counsel at the present term that owing to the rulings of the Court at the present term, it would be necessary to strengthen their proofs upon the continuous possession under title and color of title.

3. For want of the evidence of Charles C. Hoffman, who has been subpœnaed, and has been in attendance upon the court, and left last week without the knowledge and consent of this deponent, leaving word that he was obliged to go and do a job of work, and could not wait until Monday; that said evidence is material and will prove the possession of this defendant of part of the lands in controversy in the Burnley and Porter suit for over three years before the commencement of this suit; that said witness is not absent by his consent or procurement, and he knows of no other witness by whom he can so clearly prove the same fact. That the issue of the length of possession is material in the cause. That he did not find out the whereabouts of said witness until since the commencement of this suit when he learned he was upon Dickinson's Bayou, and had been subpœnaed.

4. For want of the evidence of Moses Morrison, who is a material witness, and whose materiality he only recently learned. That as soon as he learned his place of residence, which is in Matagorda County, within one hundred miles of Galveston, he sued out a subpœna for said witness, and sent it to the Deputy Marshal residing in said county, James Selkirk, who has returned that the witness is not found, for want of time, before the time set for the trial of this cause, but resided in said county. That he expects to prove by said witness that the grantee, Juan Caño, wanted the legal qualifications of a colonist, and that the Juan Caño grant was not understood by the surveyor who surveyed it, and those who understood the boundaries of these grants to cross Powder-horn Bayou, so as to embrace the location in controversy. That witness learned of this witnesses knowledge too late to take his deposition, and defendants ask for an order of survey for the purpose of surveying the plaintiff's grants in controversy.

That this application is not made for delay, but that justice may be done, and he expects to procure the evidence by next term.

Sworn to and subscribed before me, this 27th day of February, A. D. 1855.

JOHN S. JONES.
U. S. Comm'r.

WM. M. COOK.

And afterwards, to wit, on the same day and year, the Court here made an order in this cause which is in the words and figures following, that is to say:—

Order of Court.

ALBERT T. BURNLEY
vs
S. A. WHITE and others. } No. 213.

SAME
vs.
GEORGE S. REUSS *et als.* } No. 218.

SAME
vs.
MOORE AND LIBBALD. } No. 220.

BURNLEY & PORTER
vs
WM. M. COOK *et als.* } No. 441.

On the motion of *of* the defendants the above entitled causes were continued in the affidavit of William M. Cook, one of said defendants, but it is agreed by said defendants, and thereupon ordered by the Court, that the rule for trial in the defendants in said suit shall be peremptory at the next term of their court.

The suggestion of the death of John H. Baldwin, one of the defendants in the suit No. 213, being erroneous, is withdrawn, and it is stipulated by defendants and their counsel, that they will enter the appearance, on or before the first day of July next, in proper form of the representations or legal heirs of the defendants in the above suits who have deceased, without scire facias or other proceedings. And that in case of the death of any of the defendants before the next term of the court, the appearance of their heirs or legal representations shall be entered so as not to delay trial.

In suit No. 441 it is agreed that Samuel A. White be made a defendant, and he now enters his appearance therein. His plea of limitations to take effect as of this date.

And afterwards, to wit, in the sixth day of March of the same year, the Court here made an order in this cause, in the words and figures following, to wit:—

1774

Order of Court.

ALBERT T. BURNLEY
vs.
MOORE & LIBBALD. } No. 220.

SAME
vs.
S. A. WHITE and others. } No. 213.

BURNLEY & PORTER
vs.
WILLIAM M. COOK *et als.* } No. 441.

On this sixth day of March, A. D. 1855, came the parties, by their attorneys, and thereupon came on to be heard the motion of the said defendants, filed Feb'y 25th, 1855, to appoint a surveyor in this case. Upon consideration whereof, it is now here ordered that the District Surveyor of Calhoun County be, and he is hereby appointed surveyor in this cause. And it is ordered that he go upon the Morales and Juan Caño grants described in plaintiff's petition, and make a survey of said grants, and also of all locations and surveys made upon the said grants under which the said defendants claim, as either of the said parties may direct, first having given at least ten days' notice to the said parties or their attorneys of the time of the said commencing said surveys, and that he return to this Court three plats of the said grants, locations, and surveys, describing the true and accurate boundaries thereof, duly certified, on or before the first Monday of January next.

And afterwards, to wit, on the twenty-third day of February, in the year of our Lord one thousand eight hundred and fifty-six, the plaintiff, by his counsel, amended his petition in the words and figures following, that is to say:—

Amended Petition.

UNITED STATES DISTRICT COURT,
Galveston, January Term, 1856.

BURNLEY
vs.
WHITE and others. } No. 213.

By leave of Court, plaintiff amends by striking out "Government of Mexico" on 1st page, 20th line, and inserting "proper authorities of the State of Coahuila and Texas, with the previous approbation of the general supreme executive power.

Strike out averment as to Jones having fourth interest, being the words following: "the legal title to which said league of land is in your petitioner and a certain Levi Jones," and instead of the words "the owner," in line following, insert "seized and possessed."

Endorse on said petition that this action is brought as well to try the title as for damages.

JONES and BALLINGER & HUGHES,
Plaintiffs' Attorneys.

And afterwards, to wit, on the same day and year, the defendants amended their plea of the statute of limitations in the words and figures following, that is to say:—

Amended Plea.

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

ALBERT T. BURNLEY
vs.
S. A. WHITE and others. } No. 213.

And for further plea in this behalf, all the defendants come and say that they, and those under whom they claim, have been in adverse possession of the premises sued for, under color of title for three years next before the commencement of said suit, and that the said plaintiff's cause of action, if any they ever had, accrued more than three years next before the commencement of said suit, and this they are ready to verify, &c.

J. A. & G. W. PASCHAL,
F. H. MERRIMAN, and
L. A. THOMPSON, *for Def'ts.*

And afterwards, to wit, on the nineteenth day of March of the same year, the Court here gave, in the words and figures following, that is to say:—

Judgment.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE *et al.* }

On this day came the parties, by their attorneys, and thereupon came a jury, to wit, John P. Gillespie, James F. Waddell, Jacob H. Thackera, Thomas Pritchard, Thaddeus C. Armstrong, James J. Thompson, James W. Simmons, Elisha O. Lynch, Ambrose Crane, Owen D. Johnson, Henry Gardner, and W. Styles, good and lawful men, who being duly sworn, well and truly to try the issue joined, on their oaths do say: We, the jury, find for the plaintiff, and assess his damages by reason of the trespass at one cent. James F. Waddell, foreman.

It is therefore considered by the Court now here, that the said plaintiff, Albert T. Burnley, do have and recover of and from the said defendants, Samuel A. White, William M. Cook, John H. Baldwin, Henry J. Huck, in his own right, and as administrator of Herman H. Rodgers, deceased, Oliver H. Stapp, Thomas Roake, William

C. Blair, administrator of Chambers Etler, deceased, and Agatha O'Brien, widow and administratrix of John P. O'Brien, deceased, the tract of land mentioned and described in his petition. And it is further considered by the Court, that the said plaintiff do have and recover of and from the said defendants the sum of one cent, his damages; also the further sum of dollars and cents, his costs by him about his suit in this behalf expended, for which execution may issue.

And thereupon the plaintiffs *a writ of possession be issued*, to the Marshal of this District to be directed, commanding him, &c., and to him it is granted.

And afterwards, to wit, on the same day and year, the defendants filed in open court, bills of exceptions in the words and figures following, that is to say:—

First Bill of Exceptions.

IN THE DISTRICT COURT OF THE UNITED STATES
for the District of Texas. Term at Galveston, 1856.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } Trespass to try title.

Be it remembered that on the trial of this cause, the plaintiff, to maintain the issue joined, on his part offered in evidence a document purporting to be the original Testimonio, in Spanish, of a colonial grant in the colony of Martin de Leon, made by Fernando de Leon, Commissioner, to one Benito Morales, and also a translation thereof, which are as follows, viz:—

SELLO SEGUNDO. DOCE REALES.

Para los años de mil seis y ochocientos 31, (*Snake and Buzzard.*) ochocientos veinte y veinte y siste. 28, 29, 30, y 32.

Habilitado para el año de 1838.

GARCIA. FLORES.

Presentacion: Señor Commissionado—Benito Morales curado y con familia ante v en la mejor firma que haya lugar en derecho se presenta y dia. Que riendo efectivo que es uno de los poblidores admitidas per al empresario actual—y hallandose sin el titulo de posesion del terrino que le corresponde come à tal poblador a v occurro para que usando de la facultad que la concede la ley. Se sirva otergar la medida y esten derle el titulo de tierra que esta situado en la barda occidental de la Laguna de Matagorda, culindante por el sud este con el sitio que se medio para Juan Cano el mismo que es valdio y de elle recibire justicia. Guadalupe Victoria, Marzo viente y siete de mil ochocientos treinte y cinca.

BENITO MORALES.

Deereto al Empresario.

Villa de Guadalupe Victoria, viente y siete de Marzo de mil ochocientos treinta y cinco. Paso esta instancia al ciudadano Placido Venabides para que in ferme á continuacion si es efectiva á no la que espone el interesado y la devuelva.

LEON.

Informe del Empresario.

Señor Commissionado: En atencion a su anterior decreto de v digo. Que el solicitante es unó de los colonos admitidas por mi para poblar los terrenos que ha mi antecesor ha demarcado el Supremo Gobierno del Estado tiene los calidades que la ley previene per le que le considero acreedor á la gracia que pide y por que el terreno que solicita es valdio y no perjudica à corporacion ne tercero alguno riendo cuento tengo que de mil ochocientos treinta y cinco.

PLACIDO VENABIDES.

Decretor al Agrimensor.

Villa de Guadalupe Victoria, Marzo viente y velu de mil ochocientos treinta y cinco. Al Agrimensor ciudadano Santiago Kerr para que practicando, cientificamente las medidas que sa solicitar anote à continuacion las correspondientes al interesado y la devuelva.

LEON.

Notas de Medidas.

Señor Commissionado: El terreno que se medio para Benito Morales segun el decreto de v esta situado sobre la Laguna de Matagorda por la margen occidental. Commensando sa una estaca que esta sobre la barranca de dicha laguna, la que es cuarta y ultima projonera del sitio que se medio a Juan Caño y primera de esta medida. Y de alli al sur cuarenta y cinco grados oeste con la linea de dicho cano, cuice mil ciento cuarenta varas a la tercera mojonera del ya citado caño de Faustino Alvarado y siguiendo la misma linea con el fendo de Alvarado tres mil quinientos veinte y uno vara a la segundo mojonera del suso dicho Alvarado y tierra del sitio que se medio à Cleto Garcia. De alli la misma linea con el fondo de Garcia hasta su segundo mojonera y tierra de Pedro Garcia cerrio tres mil quinientos trienta y siete varas. Y de alli siguiendo la misma linea con el fendo del ya citado Pedro Garcia dacientas sesenta varas à donde se paso una cetara en el llana para la segunda mojonera de esta medida. De alli al norte cuarenta y cinco grados oeste. Cuatro mil ochocientos ochenta varas a donde se puso estaca en el llano para la tercero mojonera de esta medida. De alli al norte cuarenta y cinco grados este ocho mil cuatro cientas viente y sies varas a la tercero mojonera de D. Francisco de Leon y sirve

de cuarta mojonera de esta medida. De alli al sur cuarenta y cinco grados este con el fendo de dicho Leon mil ochocientos varas a la segunda mojonera del referido Leon y sirve de quinta mojonera de esta medida. De alli con la linea del suso dicho Leon al norte. Cuarenta y cinco grados este cuatro mil ciescientas ochenta y siete varas a la primera mojonera del citado Leon que es sesta y ultima mojonera de esta medida que es una estaca que esta figada sobre la orilla de la laguna madre ya citada. Y al sur cuarenta y cinco grados oeste queda uno novia que se hombra de Juan McJeneri à setenta varas de dintancea. Y de alli siguiendo las vueltas de la laguna hasta el punto de comensar se complete una area de cincuenta millones de varas cuadradas igual a un sitio de tierra de Agostadero por esta le menos en su mitad ocupada por bahias saladas sienda su configuracion la que representa el mapa que por duplicado acompaño à v.

SANTIAGO KERR.

Librese al presentante titulo a propriepad para que per medio de el posea y disfrute el terreno que pido con Arreglo à las leyes. Por este auto asi lo probeo, mando y fermo, con dos testigos de mi asistencia en dicha Villa de Guadelupe Victoria a los once dias del mes de Abril de mil ochocientos treinta y cinco, lo que certifico FERNANDO DE LEON; De Asistencia, Francisco de Cardenas; De Assistencia, Bonafacio Rudriguez.

Fernando de Leon commissionado por el Supremo Gobierno del Estado de Coahuila y Tejas para el repartimienta y posecion de tierras valedas a los colonas introduecidos por il.

SELLO CUARTO. PARA EL BIENIE DE

[SEAL.]

Una Cuartilla 1832 y 1833.

GARCIA.

Empresario Ciudadano Martin de Leon a virtud de su primera centrata con el consentimiento y aprobacion del Ex'mo Sr. Vice Presidente de la Republica communicada por el secretario de relacienes al Ex'mo Sr. Gobernado del Estado y pasada en diu de Marzo de mil ochocientos trienta y dos al Senor Gefe politico de este departimento y á los que ha de introducir virtud de su segunda centrata sutre el Rio de La Baca y el arroyo de Culeto-Percuanto Benito Morales Casado y con familia es uno de los colonos comprendidos en los centralas de dicho Empresario y tiene las calidades que demanda, la ley de colonizacion de viente y cuatro, de Marzo de mil ochocientos viente y cinco y las instrucciones de comissionados de fecha cuatro de Septiembre de mil ochocientos viente y siete y segun que ha dado el dicho ciudado empresario interino. En el nombre del Estado le concedo y meto en possecion afectiva y personal de un sitio de tierra

que es el mismo que solitata y cuyos linderos estan demarcados en el mapa y notas de medidas presentadas por el agrimensor ciudadano Santiago Kerr. Como se vi en este expediente, dicho terreno es de agostadero segun su situacion y localidad confirme a lo que debera pagar al Estado la cantidad de treinta peses lo que por via de reconocimiento esta marcado en el artien lo vente y dos de la indicada ley de colonizacion lieyo sus penas alli establisidos. Quedando intentido que dentra de un año ha de constuir mojoneras de cul y sunto encada angulo del terreno, que lo ha de venpur y cultivar segun lo dispuesto en la referida ley. Que cumpliva escrupulezamente con todo lo que en ella so ordena y que famas lo pasara a manos muertos. Por tanto usando de los facultades que me sen concididas por la ley è instruccion consiguente espido el presento titulo y mando se serque testrinurio de el, y se le entreque al interesado para que posea y disfrute el terreno que se le ha concedido el, sus hijos herederos y successores a quien de el ò de ellos derecho hubiere ò accion representare por ser asi la voluntad del Estado. Es dado en la Villa de Guadalupe Victoria a los once dias del mes de Abril del año de mil ochociendos trienta y cinco firmado por mi con dos testigos de mi asistencia confirme à la ley. FERNANDO DE LEON. De Asistencia, Francisco de Cardenas; De Asistencia, Bonafacio Rodriguez.

Concuerda con su original que cuida en el archiva de esta colonia de donte le mandi sacen hay dia de su entrega en cuatro ferjas utiles la primera y ultima en papel de serlo segundo, y los vertantes en el des ello cuarto y à su confrontacion y correcion se halaron presentes de testigas instrumentales los ciudidanos. ISIDRO BONAVIDOS, Felix de Leon y Lousiano Navarro à mas de los de mi assistencia con quirnes activo en la ferma de derecho cerifico. Fernando de Leon, De asst. Fran'co De Cardenas; De asst. Bonafacio Rodrig'z.

[For map, see original, p. 40.]

Mapa de un Sitio de Tierra por Benito Morales, Formado 50,000,000 varas.

Escala 2,000 v's por pulgada.

JAMES KERR.

Translation.

To the Commissioner:—

I, Benito Morales, being a married man and having a family, in the best legal form permitted appear and say, that being actually one of the colonists admitted by the present empresario, and being without a title to the land that corresponds to me as such a settler, I hereby apply, that exercising the power granted you by law, you may be pleased to authorize the survey and extend the title to one sitio of land situated upon the west bank of Matagorda Lake (bay ?),

adjoining on the southeast the sitio surveyed for Juan Caño, the above being vacant land, and whereby I shall receive justice.

BENITO MORALES.

Guadalupe Victoria, March 27, 1835.

GUADALUPE VICTORIA, *March* 27, 1835.

Pass the above petition to Placido Venavides for him to inform in continuation whether what is set forth by the person interested be the truth, and return the same.

LEON.

To the Commissioner:—

In attention to your foregoing decree, I hereby state that the petitioner is one of the colonists admitted by me for settling the lands traced out by the executive department of the State to my predecessor, and possesses the qualifications the law provides, for which reason I consider him entitled to the favor he requests, and because the land he solicits is vacant, and he does not injure any corporation or third person, which is all I have to state upon the subject.

(Signed) PLACIDO VENAVIDES.

Guadalupe Victoria, March 28, 1835.

GUADALUPE VICTORIA, *March* 28, 1835.

To Santiago Kerr, Surveyor, to execute scientifically the survey requested, and note down in continuation that corresponding to the person interested, and return this instrument.

LEON.

To the Commissioner:—

The land surveyed for Benito Morales, in obedience to your orders, is situated upon the Lagoon of Matagorda, upon the western margin, commencing at a stake upon the deep break of said lagoon, being the fourth and last landmark of the sitio surveyed for Juan Caño, and first of this survey; thence south forty-five degrees west with the line of said Caño five thousand one hundred and forty varas to the third landmark of the aforementioned Caño, and Faustino Alvarado, and following said line with the (depth) *rear* of Alvarado, three thousand five hundred and twenty-one varas to the second landmark of the aforesaid Alvarado, and third of the sitio surveyed for Cleto Garcia; thence the same line with the depth of Cleto Garcia to his second landmark and third of Pedro Garcia, the line running three thousand five hundred and thirty-seven varas; thence following the said line with the depth of the aforementioned Pedro Garcia two hundred and sixty varas, where a stake was driven on the plain for the second landmark of this survey; thence north forty-five degrees west four thousand eight hundred and eighty varas, where another stake was driven in the plain for the third landmark of this survey; thence

north forty-five degrees east eight thousand four hundred and twenty-six varas to the third landmark of Don Francisco Leon, and it serves as the fourth landmark of this survey; thence south forty-five degrees east with the depth of said Leon two thousand eight hundred and fifty varas to the second landmark of the aforementioned Leon, which serves as the fifth landmark of this survey; thence with the line of the aforementioned Leon north forty-five degrees east four thousand six hundred and eighty-seven varas to the first landmark of said Leon, which is the sixth and last landmark of this survey, being a stake driven upon the bank of the aforementioned main lagoon (Laguna Madre), and south forty-five degrees west, at the distance of seventy varas, there is a draw-well called John McHenry's well; thence following the lands of the lagoon to the place of beginning, completing an area of fifty million square varas, equal to one sitio of land—grazing land, because one-half of it at least is occupied by saline bays, the shape of said land being as is represented in the map which I herewith accompany you in duplicate.

SANTIAGO KERR.

Title shall issue to the applicant, that by means thereof he may possess and enjoy the land he requests according to law, by this decree. I so provide, order, and sign, with my two assisting witnesses, in this the said town of Guadalupe Victoria, on the 11th April, 1835, which I hereby certify.

FERNANDO DE LEON.

Assisting witness,
FRANCISCO DELARDENAS.
Assisting witness,
BONIFACIO RODRIGUEZ.

Fernando de Leon, commissioned by the Executive Department of the State of Coahuila and Texas for distributing and giving possession of lands to the colonists introduced by the Empresario, Martin de Leon, in virtue of his first contract, with the consent and approbation of his Excellency the Vice-President of the Republic, communicated by the Secretary of State, and passed on the tenth of March, 1832, to the Political Chief of this Department, and to those he is to introduce by virtue of his second contract between the river Lavaca and Culeto Creek. Whereas Benito Morales, a married man and having a family, is one of the colonists comprised in the contracts of said Empresario, and possesses the qualifications required by law, the colonization law of the 24th of March, 1826, and commissioner's instructions of September 4th, 1827, and agreeably to the report of the said Empresario *ad interim:* In the name of the State, I hereby grant and put him in actual and real possession of one sitio of land, being the same which he solicits, and whose boundaries are marked out in the map and notes of survey presented by Santiago Kerr, Surveyor, as appears in this dispatch. Said land, agreeably to

its locality and situation, is grazing land, and conformably thereto he must pay the State the sum of thirty dollars, marked out as acknowledgment in the 22d article of the aforementioned colonization law under the penalties therein established, it being understood that within one year he must construct landmarks of stone and lime upon each angle of the land, that he must occupy and cultivate the same agreeably to the provision of the aforementioned law, that he shall scrupulously fulfil all that is therein ordained, and shall never transfer it in mortmain. Therefore, exercising the power granted in me by the law and consequent instructions, I hereby issue the present title, and order an attested copy thereof to be taken and delivered to the person interested, that he may possess and enjoy the land that has been granted him, himself, his children, heirs, and successors, or whosoever from him or them should have a right, or represent an action, for such is the will of the State.

Given at the town of Guadalupe Victoria, on the 11th of April, 1835, signed by myself, together with my two assisting witnesses.

FERNANDO DE LEON.

FRANCISCO DE CARDENAS.
BONAFACIO RODRIGUEZ.

A true copy of the original remaining in the archives of this colony, from which, on this date of the delivery thereof, I ordered it to be taken on four available leaves, the first and last on paper of the second seal, and the rest upon that of the fourth, and in the act of comparing and correcting were present, as instrumental witnesses, Isadro Venabides, Felix de Leon, and Luciana Navarro, besides my assisting witnesses, with whom I act in legal form, I hereby certify.

FERNANDO DE LEON.

Assisting witness,
FRANCISCO DE CARDENAS.

Assisting witness,
BONAFACIO RODRIGUEZ.

In the town of Guadalupe Victoria, on the 27th day of May, 1835, before me, Diego Garcia, primary judge of said town, personally appeared Benito Morales, whom I hereby certify that I know, and stated that he cedes, in entire legal form in class of sale, to Leonardo Manso, a sitio of land adjudicated to him as a colonist of the empresa of Martin de Leon, being the same expressed in the title by him presented in attested copy on the 11th April last, which document it is his will should pass to the possession of said Manso, as accrediting the sale by him stipulated to said Manso, in consideration of his having received in his own hands, and to his entire satisfaction, the sum of four hundred and ninety-nine dollars, the value of said sitio, and of his remaining and binding himself responsible to pay to the State the sum of thirty dollars, assigned as acknowledgment in said

title, which he must pay in conformity of the provision of the law of the 24th of March, 1825, and to fulfil every duty imposed in said law; the exponent, on his part, renouncing every dominion, action, right, pre-eminence, or prerogative which by virtue of said concession and title he possessed, himself, his children, his heirs, and successors, over the land therein specified, ceding them all to the aforementioned Manso according to the thirty-sixth article of the law of the 26th of March of the year last past; and for defence of the aforementioned Manso, he formally renounces all the laws that may be in his favor, including that of retraction or recantation. That it is his will that to this document no other interpretation shall be given than that which it literally expresses, and should any be given it, that it may be in favor of the aforementioned Manso; and also if any omission of formalities or expression be observed, they should all be considered as inserted; and that, should it be considered that the aforementioned sitio is worth or may be worth more than the aforementioned sum, he renounces the excess in benefit of the purchaser, and makes him free and spontaneous donation of all it may be, exonerating him from all responsibility. And for the validity and force of this document, and not being able to sign his name, the vendor made the sign of a cross, myself signing, the said Manso, and the two assisting witnesses with whom I act in legal form, I hereby certify.

DIEGO GARCIA,
BENITO MORALES,
LEONARDO MANSO.

Assisting witnesses,
JOSÉ MARIA EZEALERA,
ALEXO PEREZ.

A true copy of the original existing in the archives under my charge, from which, on this the day of delivery thereof, it was ordered to be taken; and in the act of comparing and correcting were present, as instrumental witnesses, with whom I act from default of a Notary Public, there being none in the manner the law provides.

DIEGO GARCIA.

Assisting witness,
JOSÉ MARIA EZEALERA.

Assisting witness,
ALEXO PEREZ.

To the admission of which paper in evidence the defendants, by their counsel, objected, on the ground that the want of authority in the commissioner of the colony to make the grant appears upon the face of the grant itself, viz: that it appears therein that it includes more than one sitio or league of land, which was the limit of his authority; and thereupon, the Court expressing a willingness to hear testimony as to law and usage on this subject, the plaintiff introduced

and read in evidence a portion of the deposition of José M. J. Carvajal, which is as follows, to wit:—

Deposition of José M. J. Carvajal.

I held the office of Surveyor in Martin de Leon's colony from 1832 up to the time of the Texan Revolution. I received my first commission as Surveyor about 1830 from the Land Commissioner of Coahuila and Texas, and have been a surveyor and exercising generally the profession of a surveyor since that time. I am not a professional surveyor, but am familiar with the land laws of Mexico, particularly those relating to surveys, and I know that there is no prohibition to cross lagoons, or bayous of salt water, making from the bays or Gulf, or running the lines of a survey. The law requires that surveys made on bays should front on them, but ponds and bayous may be crossed by the lines, and the depth of the water would have no influence in the case. It is customary in surveying to cross such bayous and ponds and include them in the survey, but in computing the area of the survey, the land covered by the marsh or lagoon (in settlements) was not taken into consideration where the land was intended for cultivation, or came under the class "Temporal." It has been the universal practice, where a very large grant of twenty or a hundred leagues for instance was being surveyed, to include in the computation of the area everything included within the lines run. But in surveying small tracts for settlers, none but good land, or that susceptible of cultivation or fit for pasture, was computed in calculating the area; the practice in De Leon's colony was never to include in the computation of the area of grants to settlers, any salt pond or marsh included in the lines of the survey, and this practice was approved by the government and prescribed in all the colonies as far as I know.

From the Cross-examination.

While I was Surveyor in De Leon's colony my practice was, and the practice was general, in making a survey calling for one league of land, for example; if the amount required could not be obtained on one side of a lagoon, or stream, which happened to be in the way, I would run the line to the water and continue the survey on the opposite side, and not compute the land covered by the water in the area; and if the circumstances of the case permitted the return to be made in one plat, it would be so done, if not, two plats would be made. In surveying lands on navigable streams, such as the Lavaca and Guadalupe Rivers, our practice was to give front on such stream one-half the depth of the survey; that is, if I gave one thousand varas front, I would run back two thousand varas; this practice prevailed in fronting only on sweet water courses of importance, and had no effect in surveys made on the coast fronting on the bays or on small streams. If the complement of a survey cannot be ob-

tained on one side of a navigable bay, the lines of the survey could be extended, and the requisite area obtained on the other side; the whole might be one survey. If a survey of a league in De Leon's colony had been commenced on one side of a salt bay, eight miles long and four broad, and the requisite area could not have been obtained on one side, the lines might have been continued across the bay, and the complement obtained on the other side. It might have been included in the same survey. The land covered by water would have been covered in the grant, but not computed in making up the area of the survey, the full amount of which must be made on land.

And thereupon the defendants, to sustain their objection, called Samuel M. Williams, who being duly sworn, testified as follows, viz:—

Testimony of Samuel M. Williams.

Witness understands the Spanish language, and was an officer in Austin's colony. Was sent to Saltillo by Stephen T. Austin, to learn the laws generally relating to the granting of lands to colonists, the requirements of cultivation, and their right to transfer, &c. By Austin's first contract under the Emperor Iturbide, he had authority to colonize grants for eleven leagues, but no such authority existed after the colonization law of 1825, and the law specified what quantity of land a colonist was entitled to. There never was a law authorizing more than one sitio or a league to be embraced in a grant to colonists, and there was no custom, law, or authority to embrace more on any pretext. He knew Carvajal well, and if he (Carvajal) had a knowledge of the laws relating to lands or surveying, superior to that of the witness, he, the witness, did not know, or believe it. All instructions to the commissioners were confined to the laws solely. General Teran had no powers in respect to commissioners. Witness saw written instructions from the Governor of Coahuila and Texas, whom witness knew, and which instructions witness knew to be genuine, to General Teran, ordering him not to meddle with the duties of commissioners in Texas. The grant in question being shown to the witness and inspected by him, he said, that if such a survey as appears in this grant had been returned to him as commissioner, he would have sent it back, as it includes two leagues, when the law only authorizes one league. No such question, however, had ever occurred in any grant in Austin's colony, or within witness's knowledge, and witness never had any specific information or instructions relative to such a question, but speaks from his general construction and understanding of the laws.

Defendants also produced Henry Beaumont, a witness, who being duly sworn, said that—

Testimony of Henry Beaumont.

He had examined the Benito Morales league, that he had surveyed

it, and has been over the most, if not every part of it, at high tides; a portion of it, not exceeding one hundred and fifty acres, is covered with water—the rest is good dry land.

Defendants also offered in evidence the deposition of Antonio Manchaca, which was read, and is as follows, viz:—

Deposition of Antonio Manchaca.

I am a native Mexican, was born in San Antonio, A. D. 1800; am an educated man. I am familiar with the land system and laws of Mexico, and Coahuila, and Texas, from the formation of the Federal Constitution, in 1824. Native Mexicans could purchase grants from Mexico as high as eleven leagues of land, but colonists were not entitled to more than one league of land. I was well acquainted with Antonio Navarro, who was the Commissioner of De Witt's colony, and was acquainted with Miguel Arciniega, who was the Commissioner for Austin's colony, and Martin de Leon, who was Empresario at Victoria for De Leon's colony. I was acquainted with Juan Antonio Padilla, General Commissioner for issuing land titles for the State of Coahuila and Texas. The universal practice of these officers was to give one league only to colonists, and I have known them to refuse a greater quantity to applicants. The same practice prevailed in Power and Hewetson's colony. I never knew of any custom or practice to give an excess of quantity, because of the inferiority of the land. The colonists had the right to select any vacant land in the colony; after selecting the land, the officers would have it surveyed for him, but could not add to the quantity because it was inferior land. I have frequently heard colonists ask De Leon for more than one league of land, which he always refused. After the colonist obtained his league, upon proper representation by the Empresario or Commissioner to the Governor of Coahuila and Texas, he would grant, by way of augmentation for superior merit, an additional quantity, but the Commissioner had no power to grant more than one league, and any grant from the Commissioner, without the order of the Government of the State, to a colonist for more than a league of land, would be void. The law and the practice forbid grants to be made to colonists on both sides of a navigable stream, but the purchase grants could be divided. I have frequently heard Martin de Leon refuse to make grants, part on one side of the Guadalupe River, and part on the other, saying that "they must take all on one side."

And thereupon the Court overruled the objection made by the defendants to the introduction of the said colonial grant, in evidence, and the same was read in evidence to the jury.

To which judgment and ruling of the Court, admitting the said grant in evidence, the defendants by their counsel excepted, and pray that this, their Bill of Exceptions, may be signed, sealed, and made part of the record in this cause; and it is done accordingly.

JOHN C. WATROUS. [SEAL.]

Second Bill of Exceptions.

DISTRICT COURT OF THE UNITED STATES
for the District of Texas: Term at Galveston, 1856.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } Trespass to try title.

Be it remembered, that in the trial of this cause, the plaintiff, further to maintain the issues joined herein, produced and read without objection a conveyance from Benito Morales to Leonardo Manso, for the premises in controversy, and also offered to read, in evidence, a document purporting to be a copy of a deed of conveyance from Lenardo Manso to Peter W. Grayson, made and passed before Pierre Labjche, a Notary Public in the State of Louisiana, with sundry certificates thereto annexed, and which are in the words and figures following, to wit:—

Conveyance from Manso to Grayson.

"Ne varietur."

HENRY L. GARLAND,
Notary Public.

STATE OF LOUISIANA,
Parish of St. Landry.

Be it known that this day, before me, Pierre Labiche, Notary Public in and for the Parish of St. Landry, duly commissioned and sworn, personally came and appeared Leonardo Manso, citizen of the Republic of Mexico, who declared that for and in consideration of the sum of eleven thousand dollars to him in hand paid, the receipt whereof is hereby acknowledged, he does, by these presents, grant, bargain, and sell to Peter W. Grayson, citizen of Texas (late a portion of the said Republic of Mexico), his heirs and assigns, he here present and accepting the following tracts or parcels of land lying and being in the said Texas, viz: one league or sitio of land granted to him, the said Leonardo, as a colonist or settler in the colony of Martin de Leon, by deed or grant executed on the 26th day of September, 1834, the said league or sitio of land lying on the west bank of the River La Baca, immediately above and adjoining the league granted to Juan Fernandez; also one league or sitio of land purchased by said Leonardo of Carlus Lazo, to whom the same was granted as a colonist or settler on the 18th day of February, 1833, the same lying and being on the River La Baca, bounded on the lower side by the league of Sylvester de Leon, and on the upper by the league of Juan Fernandez; also one league or sitio of land purchased by the said Leonardo of Manuel Lopez, to whom the same was granted as a colonist or settler on the 9th day of April, 1835,

the same lying and being on the lower margin of the Green Lake (Laguna Verde); also one league or sitio of land purchased by said Leonardo of Enrique Rendon, to whom the same was granted as a colonist or settler on the 8th day of April, 1835, the same lying and being on the east margin of the lakes or lagoons into which the River Guadalupe empties itself, and adjoining on the lower side the league granted to Manuel Lopez; also one league or sitio of land purchased by said Leonardo of José Miguel Certés, to whom the same was granted as a settler or colonist on the 8th day of April, 1835, the same being and lying on the east margin of the lagoons mentioned above, and adjoining on the lower side the league granted to Enrique Rendon; also one league or sitio of land purchased by said Leonardo of Pedro Miranda, to whom the same was granted as a colonist on the 8th day of April, 1835, the same being and lying on the east margin of the lagoons mentioned above, and adjoining on the lower side the league granted to José Miguel Certés; also one league or sitio of land, purchased by said Leonardo from Miguel Castilla, to whom the same was granted as a colonist on the 8th day of April, 1835, the same lying and being on the east margin of the lagoons aforesaid, and adjoining on the lower side the league of Pedro Miranda; also one league or sitio of land purchased by said Leonardo of José Felix de la Fuente, to whom the same was granted on the 8th day of April, 1835, the same lying and being on the northeast margin of the lagoon called the Old Mission [La Mision Vieja], and adjoining on its lower side the league granted to Miguel Castillo; also one league or sitio of land purchased by said Leonardo of Maximo Campos, to whom the same was granted as a colonist on the 31st day of March, 1835, the same lying and being on the east margin of the great lake into which the River Guadalupe empties itself, and adjoining on its lower side the league granted to Felix de la Fuente; also one league or sitio of land purchased by the said Leonardo of Eusébio Hidalgo, to whom the same was granted as a colonist on the 8th day of April, 1835, the same lying and being on the east margin of the lake just above mentioned, and adjoining on its lower side the league granted to Maximo Campos; also one league or sitio of land purchased by said Leonardo of Basilio Maldonado, to whom the same was granted as a colonist on the 8th day of April, 1835, the same adjoining the league granted to Eusebio Hidalgo; also one league or sitio of land purchased by said Leonardo of Eustaquio Cantu, to whom the same was granted as a colonist on the 8th day of April, 1835, the same adjoining the league granted to Basilio Maldonado; also one league or sitio of land purchased by the said Leonardo of Pedro Garcia, to whom the same was granted as a colonist on the 10th day of April, 1835, the same adjoining the league granted to Eustaquio Cantu; also one league or sitio of land purchased by said Leonardo of Cleto Garcia, to whom the same was granted as a colonist on the 10th of April, 1835, the same adjoining the league granted to Pedro Garcia; also one league or sitio of land

purchased by said Leonardo of Faustino Alvarado, to whom the same was granted as a colonist on the 10th of April, 1835, the same adjoining the league granted to Cleto Garcia; also one sitio or league of land purchased by said Leonardo of Santiago Gonzales, to whom the same was granted as a colonist on the 11th day of April, 1835, the same adjoining the league granted to Faustino Alvarado; also one league or sitio of land purchased by said Leonardo of Juan Caño, to whom the same was granted as a colonist on the 11th day of April, 1835, the same lying and being on the west margin of the Lagoon of Matagorda, and adjoining the league granted to Santiago Gonzales; *also one league or sitio of land purchased by said Leonardo of Benito Morales, to whom the same was granted as a colonist on the* 11*th day of April*, 1835, *the same lying and being on the west margin of the Lagoon of Matagorda, and adjoining the league granted to Juan Caño;* all the above mentioned lands situate in the colony granted to Martin de Leon in the year , and official copies of the titles to which in the said Leonardo Manso accompany this instrument, save a particular conveyance from Carlos Lazo to him, the said Leonardo Manso, in room of which he now presents the official copy of the grant or concession to the said Lazo as evidence of title, with a letter of instruction to his agent and attorney in Texas, to procure from said Lazo, if he has not already done it, a legal conveyance of his league, so as to perfect the title of said Grayson; all which accompanying copies of grants and instruments of sale are referred to in this instrument for greater certainty, as to the description of the lands conveyed by them.

To have and to hold the said several tracts of land to the said Peter W. Grayson, his heirs and assigns, to their proper use and behoof forever, the said Leonardo hereby renouncing all dominion, right and title to the same in favor of the said Grayson and his successors, and the said Leonardo renounces all laws in his favor, including that of "rectro or rectrado," and declares that to this instrument he intends no other than a literal interpretation, executing it as a full and perfect deed of sale, without reserve or right of reclamation. The said Grayson hereby binding himself to pay whatever fees may yet be due to the Government on said lands, and to comply with whatever obligations may be enjoined by the law of the 24th of March, 1825.

Done and passed in my office, in the town of Opelousas, in presence of John Simons and Henry Bruse, competent witnesses, who have signed these presents with the said contracting parties, and we the said Notary Public, after reading, this sixth day of April, Anno Domini eighteen hundred and thirty-six.

L. MANSO.
P. W. GRAYSON.

Witnesses:
JOHN SIMONS.
HENRY BRUSE.

LABJCHE,
Not. Pub.

STATE OF LOUISIANA,
Parish of St. Landry.

I, Henry L. Garland, Notary Public in and for the Parish of St. Landry aforesaid, and successor in office to Pierre Labjche, named in the above act, do certify that the foregoing four pages, paraphed "ne varietur" by me, contain a true copy of the original record made by Pierre Labjche, and now legally in my office as Notary aforesaid and successor to said Pierre Labjche, and that I am the keeper of said record.

Given under my hand and private seal this ninth day of
[SEAL.] May, eighteen hundred and fifty-one, at Opelousas.

HENRY L. GARLAND,
Not. Pub.

STATE OF LOUISIANA,
Parish of St. Landry.

I, John H. Overton, Presiding Judge of the 15th Judicial District of the State of Louisiana, which includes the Parish of St. Landry, and Presiding Judge of the District Court for said Parish of St. Landry, do certify that the foregoing certificate and attestation of Henry L. Garland, Notary Public of the Parish of St. Landry, is in due form and by the proper officer.

Given under my hand this 13th day of May, A. D. 1851.

J. H. OVERTON,
Judge 15th Judicial District.

STATE OF LOUISIANA,
Parish of St Landry.

I, A. Gaingers, Clerk of the District Court of the 15th Judicial District in and for the Parish of St. Landry, do hereby certify that the said John H. Overton, who signed the preceding certificate, is duly commissioned and qualified as Presiding Judge therein stated.

Given under my official signature and seal this 13th day
[SEAL.] May, A. D. 1851.

A. GAINGERS,
Cl'k.

Agreement of Counsel.

I admit the sufficiency of the certificates to the foregoing deed, as conformably to the act of Congress, March 27, 1804, waiving want of notary's seal, &c.; but do not admit that the deed could be certified under that law.

May 23, 1851.

GEO. W PASCHAL,
ALLEN & HALE,
Atty's for Reuss & Bindewold.

And at the same time, and with said copy of said deed of conveyance, he produced and offered to read in evidence the deposition of Guy H. Bell, a witness produced, sworn and examined *de bene esse*, in the State of Louisiana, which said deposition is in the words and figures following, to wit:—

Deposition of Guy H. Bell.

STATE OF LOUISIANA,
Parish of St. Landry, to wit.

Deposition taken in the case of

A. T. BURNLEY
vs.
S. A. WHITE and others. } No. 213.

Pending in the District Court of the United States for the District of Texas, at Galveston.

Before me, John H. Overton, Presiding Judge of the Fifteenth Judicial District of the State of Louisiana, which includes the Parish of St. Landry, and Presiding Judge of the District Court for said Parish of St. Landry, personally appeared Guy H. Bell, who being duly sworn according to law, deposeth—

That he has examined a deed on file in the office of Henry S. Garland, a Notary Public in the Parish of St. Landry, State of Louisiana, successor of Pierre Labjche, deceased, which deed purports to be a sale of certain tracts of land, situated in Texas, from Leonardo Manso to Peter W. Grayson, dated 6th April, A. D. 1836, and passed before the said Pierre Labjche, a Notary Public, a certified copy of which deed is paraphed by him, the deponent, who further deposeth, that he was well acquainted with the said Pierre Labjche, the said Notary, and with his handwriting, and that the signature, "Labjche, Not. Pub.," to said deed, is genuine, and in the proper handwriting of the said Pierre Labjche. That he was well acquainted with John Simons, one of the witnesses to said deed. That he believes the signature to be genuine, and in the proper handwriting of said John Simons. That he is not acquainted with the handwriting of any of the other parties or witnesses to said deed, and that he believes that Leonardo Manso and John Simons are both dead. That he knows nothing of P. W. Grayson or Henry Bruse, or where they reside, if alive.

GUY H. BELL.

Sworn to and subscribed before me, the nineteenth day of May, A. D. 1851.

J. H. OVERTON,
Judge 15th Jud'l District.

STATE OF LOUISIANA,
Parish of St. Landry, to wit:—

I, John H. Overton, Presiding Judge of the Fifteenth Judicial District of the State of Louisiana, which includes the Parish of St. Landry, and Presiding Judge of the District Court for said Parish of St. Landry, do certify that the witness whose deposition is on the reverse hereof written, was duly cautioned and sworn according to law, to testify the whole truth; that his deposition is in his own proper handwriting, and subscribed by said witness before me; that the reason for taking the deposition was that the witness lived in the Parish of St. Landry, State of Louisiana, more than one hundred miles from Galveston, State of Texas, the place of trial of the cause the title of which is on the reverse hereof given. That no notice was served on any of the adverse parties, or any of their attorneys, or agents, because none of said adverse parties, nor any attorney or agent of them or any of them was within one hundred miles of the town of Opelousas, in the said Parish of St. Landry, State of Louisiana, the place of taking of said deposition, at the time of taking the same, to my knowledge or belief. And that I am not of counsel, nor in any manner interested in the event of said suit, and retained said deposition for the purpose of sealing up and forwarding the same to the said Court for which it was taken.

In testimony of all which, I have hereunto signed, officially, in the town of Opelousas aforesaid, the sixteenth day of May, A. D. 1851.

J. H. OVERTON,
Judge 15th Jud'l District.

Admission of Counsel.

Objections to the certificate waived. Objections to facts proven to be taken at the trial. May 23, 1851.

J. A. & G. W. PASCHAL.

ALLEN & HALL,
Attys. for Reuss & Bindewold.

To the admission of which copy of said deed of conveyance, the defendants by their counsel objected on the following grounds: that is to say—

First. Because it was not executed in accordance with the then existing laws of Texas in this, to wit:—

1. That it did not appear that it was executed before any notary or other officer authorized by law to take and authenticate public instruments.

2. That it does not appear that the foreign notary before whom it purports to have been passed and executed, made out and delivered

to the interested party at the time *a testimonio*, or second original, as by the then existing law was required.

Secondly. Because the protocol or first original should be produced, or satisfactorily accounted for before said copy, which is secondary evidence, can be admitted.

Thirdly. Because if any *testimonio* or second original was ever in fact issued, its absence is not accounted for.

Fourthly. Because the showing that the protocol, or first original, is in the office of a notary in the Parish of St. Landry, in the State of Louisiana, is not satisfactorily accounting for the non-production of the original.

Fifthly. Because the Notary's office in the State of Louisiana is not, *quoad* the original paper, a public office within the meaning of the act of Congress of March 27, 1804, entitled "An act supplementary to an act entitled An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated so as to take effect in every other State."

Sixthly. Because the Notary's office in the State of Louisiana is not, *quoad* the original paper, a public office within the true intent and meaning of the rule of the common law.

Seventhly. Because it is not proven in accordance with the rule and principle of the common law in this, to wit:—

1. That the witness, Guy H. Bell, does not prove that it is an examined copy compared by him with the original.

2. That the witness, Guy H. Bell, does not state his means of knowledge of the handwriting of the witness, John Simons, nor that he was acquainted with his handwriting.

3. That the said witness, Guy H. Bell, does not state his means of knowledge of the handwriting of Pierre Labjche, the Notary; and

4. That all proof relating to the handwriting of the Notary Pierre Labjche, is irrelevant, inasmuch as he was not an instrumental, assisting or subscribing witness to said original paper.

Eighthly. And to the deed itself it was further objected that it has neither instrumental or assisting witnesses, as by the law of Texas, in force at the time, was required.

Ninthly. That the deed of conveyance shows upon its face that it was executed upon the sixth day of April, in the year of our Lord one thousand eight hundred and thirty-six, by Leonardo Manso, reciting therein that he was a citizen of the Republic of Mexico, to Peter W. Grayson, reciting therein that he was a citizen of Texas, late a portion of said Republic of Mexico, and the fact being judicially known to the Court that said Republic of Mexico and said Republic of Texas were then engaged in an open and public war with each other, the said deed of conveyance was and is therefore void.

All of which objections, after argument had thereon, were overruled by the Court, and said copy of said deed of conveyance was admitted to be read in evidence to the jury, and the same was so

read. To the admission of which evidence, and the ruling and judgment of the Court upon said objections made thereto, the defendants by their counsel excepted, and inasmuch as the said matters herein contained do not appear of record, pray that this their bill of exceptions may be signed, sealed and made part of the record, and it is done accordingly.

JOHN C. WATROUS. [SEAL.]

Third Bill of Exceptions.

In the District Court of the United States in and for the District of Texas, sitting at Galveston, in said district.

ALBERT T. BURNLEY
vs.
SAMUEL A. WHITE and others. } Trespass to try title.

Be it remembered that on the trial of this cause the said plaintiff, further to maintain the issues on his part, in addition to the documents and testimony mentioned and set forth in the first and second bills of exceptions, and contained therein, proved the will of Peter W. Grayson deceased, with the probate thereof, and the grant of letters testamentary to his executors, Gail Borden and John P. Borden; and a decree of the Galveston District Court in a suit brought by Albert T. Burnley and Levi Jones against said executors, ordering said executors to convey to said Burnley and Jones the undivided three-fourths interest in and to all the lands conveyed by Leonardo Manso to said Grayson.

Plaintiff also introduced and read in evidence, without objection, the following deed of conveyance from the executors of said Grayson to said Burnley and Jones.

Conveyance from Executors of Grayson to Burnley & Jones.

REPUBLIC OF TEXAS,
Galveston County.

This indenture, made and entered into this twenty-second day of May, one thousand eight hundred and forty-four, between Gail Borden, Jr., and John P. Borden, executors of the last will of Peter W. Grayson, deceased, and Levi Jones and Albert T. Burnley of the other part—witnesseth: That, whereas, by a Decree of the District Court of the county of Galveston aforesaid, at its fall term for the year 1843, it was ordered that the parties of the first part convey to Levi Jones and Albert T. Burnley, parties of the second part, certain lands purchased by said Peter W. Grayson for them, and transferred by various deeds to him the said Grayson. Now, therefore, in obedience to said decree, and in consideration of the sum of five dollars, the receipt whereof is hereby acknowledged, the said Gail Borden, Jr., and John P. Borden, executors as aforesaid, parties of the first part, have bargained, sold, and released, and by these presents do bargain, sell, and release unto the said Levi Jones and

Albert T. Burnley, all the lands in the Republic of Texas, purchased by Peter W. Grayson, of Leonardo Manso, William Arrington, Valentine Garcia, Diego Garcia, Samuel Williams, José Coffin and Sarah his wife, and Thomas Jackson and wife. Also a certain league of land lying on the east side of the West Bernard, designated on the map as number (1) one; the same being one of eleven leagues purchased by said Grayson of Michael Muldoon. A more full description of all which will be found in the various deeds recorded in the clerk's office of the several counties where the lands lie, made and executed by the several persons hereinbefore named to said Grayson, excepting, however, one equal undivided fourth part of the lands purchased as aforesaid from Leonardo Manso; and which said fourth part is by the will of said Grayson to be conveyed to William M. Lambeth or his assigns. To have and to hold the above described lands unto the said Levi Jones and Albert T. Burnley, their heirs or assigns, forever, together with all and singular the hereditaments and appurtenances unto the same belonging, or in any wise appertaining, for the considerations aforementioned.

In testimony whereof, the said Gail Borden, Jr., and John P. Borden, have hereunto set their hands and affixed their seals, the date above written.

G. BORDEN, JR., [SEAL.]
JOHN P. BORDEN. [SEAL.]

REPUBLIC OF TEXAS,
County of Galveston.

Before me, John S. Jones, Chief Justice of said county, this day personally came and appeared Gail Borden and John P. Borden, the parties to a certain deed on the other side hereof, written and bearing date the twenty-second day of May, one thousand eight hundred and forty-four, who acknowledged and declared that he signed, sealed, and delivered the same in his act and deed (as one of the executors of Peter W. Grayson) for the purposes therein set forth and contained.

To certify which, and make authentic, I have hereunto set my name and seal this 24th day of August, A. D. 1844.

[SEAL.] JOHN S. JONES,
Chief Justice.

Plaintiff also introduced and read in evidence conveyance from Levi Jones to Albert T. Burnley.

Conveyance from Jones to Burnley.

This indenture, made this 10th day of July, in the year of our Lord 1848, between Levi Jones of the one part, and Albert T. Burnley of the other part—witnesseth: That the said Jones, in consideration of an agreement entered into with the said Burnley, on the

twenty-third day of June, 1845, and the further consideration of the sum of ten dollars, to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, alien, confirm, and convey to the said Burnley, all the lands in the State of Texas, which were devised by the will of Peter W. Grayson, deceased, to the parties hereto, and part of which were conveyed by deed from the executors of said Grayson by deed bearing date the twenty-second day of May, 1844, embracing all the lands in the Republic of Texas, purchased by Peter W. Grayson of Leonardo Manso, William Arrington, Valentine Garcia, Diego Garcia, Samuel Williams, José Coffin and Sarah his wife, and Thomas Jackson and wife. Also a certain league of land lying on the east side of the West Bernard, designated on the maps as number one (1), the same being one of eleven leagues purchased by said Grayson of Michael Muldoon; a more full description of which will be found in the various deeds recorded in the clerks' offices of the several counties where the lands lie, made and executed by the several persons, hereinbefore named, to the said Grayson, excepting, however, one equal undivided fourth part of the lands purchased as aforesaid from Leonardo Manso, and which said fourth part is, by the will of said Grayson, to be conveyed to William M. Lambeth, or his assigns.

To have and to hold the said lands unto the said Burnley, his heirs and assigns, forever, with all the privileges and appurtenances thereunto belonging or in any wise appertaining, the said Jones hereby binds himself, his heirs, executors and administrators against the claims of all persons whatsoever claiming the same by, through, or under him or them to warrant and forever defend.

In testimony whereof the said Levi Jones has hereunto set his hand and affixed his seal at the city of Galveston, the day and year first above written.

LEVI JONES. [SEAL.]

Signed, sealed, and delivered in presence of

O. D. JOHNSON,
EDW'D J. DAVIS.

STATE OF TEXAS.

Before me, Elisha A. Rhodes, a Notary Public in and for the County of Galveston, State aforesaid, appeared Levi Jones, to me known, and acknowledged the foregoing conveyance to Albert T. Burnley to be his act and deed.

In testimony whereof, I hereunto subscribe my name and affix the seal of my office, at Galveston, the 12th July, 1848.

[SEAL.] E. A. RHODES,
Notary Public.

Plaintiff then offered to read to the jury the depositions of Nicholas

Bernarides and Margaret T. Wright, which were taken at the instance of defendants, *de bene esse*, under the act of Congress, which was objected to by the d fendants, on the ground that the said depositions having been taken at the instance of the defendants, and the witnesses not having been cross-examined by the plaintiff, he, the said plaintiff, has not such interest in said depositions as gives him the right to use them upon the trial of this case, but the Court overruled the objection, and permitted the plaintiff to read said depositions to the jury, and they were as follows:—

Deposition of Bernarides.

Nicholas Bernarides, being cautioned and sworn, deposes and says—That he was well acquainted with Leanardo Manso, he was a citizen of Martin de Leon's colony. That he first made a settlement in 1833 or 1834 in Green Lake, and lived there a short time; then he moved up on the Levaca River. In the fall of the year 1834 Manso took his family and moved into the State of Louisiana, on account of his being a Spaniard, and he was not permitted to remain in the country by the Mexican citizens. After the Revolution of the Republic in 1836, said Manso moved, with his family, to the Rio Grande below the town of Reynoso. Does not know where he lives at this time.

Deposition of Margaret J. Wright.

States: "That she knew one Leonardo Manso, who was for a short time early in the year 1833 or 1834 in Martin de Leon's colony. He was a Gauchapin, and not allowed to remain in the country. In the fall of the year 1834 he was compelled, on the account of his being a Gauchapin, to leave; he took his family and removed to the State of Louisiana, and there remained until late in the year 1836, when the witness was at his house in the State of Louisiana. That Manso, when about leaving in 1834, said he was leaving in obedience to a decree of the State banishing all Spaniards, and he was a Spaniard, to witness' knowledge.

To which ruling and decision of the Court admitting said deposition the defendant by his counsel excepted. Defendants admitted possession, as alleged in petition.

And the said plaintiff here closed his testimony and rested his cause.

And the said defendants, to maintain and prove the issue on their parts, offered in evidence and read to the jury the report of Henry Beaumont, the surveyer appointed by the Court to make the survey of the premises in controversy, with the map accompanying the same.

Report of Surveyor.

THE STATE OF TEXAS,
County of Calhoun.

Pursuant to an order of the District Court of the United States for the District of Texas, issued 18th April, 1855, in the cause of Albert T. Burnley *vs.* Moore and Libbald, Same *vs.* Sam'l A. White *et als.*, and Burnley and Porter *vs.* William M. Cook *et als.*, filed hereunto, and marked [*A*], with copies of field notes, approved by attorneys of the parties, marked [*B*]—

I, Henry Beaumont, District Surveyor for the County of Calhoun, notice having been given to parties concerned as required, shown by document marked [*C*], filed herewith, make the following return of surveys, field-notes, and plats in triplicate in accordance thereto of the various grants, locations and surveys contemplated in the order aforesaid:—

Commenced at a stake on the west side of the Bay of Matagorda, on the lands known on the map of Calhoun County as the Juan Caño grant, on the south bank of Powder-horn Bayou at its mouth, whence the wreck of the steamship Portland bears north 57¾° E. The east corner of Moore's house on opposite side of the bayou bears N. 82½° W. about 180 varas.

Thence S. 54½ E., 3380¾ varas, to a stake in lower line of said Juan Caño grant.

Thence N. 45° E., 194½ varas, to bank of the Bay of Matagorda for the east corner of this survey, which is also the north corner of a survey for Simon Gonzales.

Thence S. 45° W. with the line of said Gonzales 236 varas, the "Mat" called Artialga, a stake from which to the east 2 varas distant is a hackberry 6 inches in diameter, marked *A*.

Thence following the same line S. 45° W. 7090 varas, to a stake in the prairie for the south corner of this survey for Juan Caño, and the west corner of Gonzales.

Thence S. 45 E., 6940 varas, to a stake on the bank of Pierce's Bayou for the south corner of Simon Gonzales, and east corner of Faustino Alvarado.

Returning to south corner of Juan Caño ran N. 45 W. 960 varas, to a slough or head of branch of Powder-horn Bay, following the said branch on same course N. 45° W. to its mouth, 300 vs. wide, at 2840 varas set stake on mark of Powder-horn Bay; crossed said Bay, 3180 vs. wide; at 6020 varas, set stake on marsh of opposite side, on same course N. 45 W., 7260 varas, the north corner of Faustino Alvarado; at 7600 varas, set stake in prairie for west corner of this survey, for Juan Caño.

Thence N. 45° E. 5140 varas, for north corner of this survey in a lake about 500 varas wide, and 1400 varas in length, a stake to bay shore of Matagorda Bay in 1300 varas, N., 45 E. To intersection of lower line of a survey of 640 acres for Thomas Wilson, 535 varas S. 45° E.

Thence S. 65¼ E., 4420 varas, shown by dotted line and plats to mouth of Powder-horn Bayou on its north side.

Thence S. 63¼ E., across said bayou 126 varas to place of beginning, containing an area of forty-eight million six hundred and sixty-five thousand four hundred and fifty ($48,665,450) sq. varas.

Survey of Powder-horn Bay and Bayou as connected with the grants of Juan Caño and Benito Morales.

Commenced at a point where southwest line of Juan Caño survey said Bay of Powder-horn, a stake 2840 varas, N. 45 W. from said Caño's south corner. Thence N. 45° E., 100 varas; N. 35° E., 980 varas; N. 67° E., 460 varas; N. 39¾ E., 1200 varas; N. 16½ E., 1060 varas; N. 71½ E., 1280 varas; N. 76½ E., 340 varas; N. 79½ E., 400 varas; N. 56½ E., 340 varas; N. 70½ E., 640 varas; N. 17½ E., 100 varas, crossing a small bayou, a branch of Powderhorn Bay, 5 varas wide; N. 77 W., 400 varas; S. 75 W., 400 varas; N. 81 W., 160 varas; N. 18¼ E., 340 varas; N. 19½ W., 160 varas; N. 59¾ W., 477 varas, to entrance of Bayou into Powderhorn Bay; N. 35 E., 350 varas; S. 65 E., 280 varas; N. 59½ E., 160 varas; N. 34 E., 101¼ varas, to stake at the mouth of Powderhorn Bayou, whence wreck of steamship Portland bears N. 54¾ E. East corner of Moore's house on opposite side of Bayou, N. 82½ W. about 180 vs. crossed bayou N. 62¼ W. 136 vs. Thence S. 54 W., 114 varas; north 80½ W., 141 varas; west 180 varas; S. 37¼ W., 295 varas to entrance of Bayou into Powderhorn Bay; N. 26 W., 95 varas; S. 62 W., 205 varas; N. 82¼ W., 605 varas, to edge of Powderhorn Bay; N. 24 E., 485 varas; N. 22 W., 119¾ varas, to stake on edge of bayou a corner of survey of 179½ acres for A. M. Gwatney; S. 45 E., 600 vs. from edge of Matagorda Bay.

Thence S. 45° W., across the bayou 300 varas wide; at 400 varas a stake on salt-marsh of Powderhorn, a corner of survey of 320 acres for D. N. White.

Thence S. 65° W., 700 varas; S. 71½ W., 410 1/10 varas, to corner of survey of one hundred and forty and a half acres for A. M. Gwatney: same course, S. 71½ W., at 612 varas; N. 76½ W., 774 varas; S. 41 W., 486 varas; S. 35½ E., 483 varas; S. 32½ W., 540 varas; S. 35½ W., 684 varas; S. 60½ W., 774 varas; S. 65 W., 140 varas, to corner of survey of 960 acres for J. Callihan; S. 63 W., 280 varas; S. 60½ W., 980 varas; N. 84½ W., 540 varas, to southwest line of Juan Caño survey; same course at 1360 varas; N. 66½ W., at 960 varas, to stake on line of B. Morales's survey on the salt-marsh of Powderhorn Bay.

Thence with said line of Morales S. 45° west, across said Bay of Powderhorn 710 varas. Thence S. 19 E., 600 varas; S. 63¼ E., 760 varas, to mouth of Powderhorn Bayou, 60 varas wide; S. 25¼ W., 780 varas; S. 55½ W., 600 varas; S. 20 W., 280 varas; S. 78¼ W., 400 varas; N. 87 W., 300 varas; S. 34 W., 680 varas; S. 75½ W., 560 varas; S. 55¼ W., 220 varas; S. 74½ E., 240 varas; S. 9½

W., 100 varas; S. 41½ W., 260 varas; S. 88¼ W., 200 varas; N. 42¼ W., 820 varas, at seven hundred varas the line of Morales; N. 30½ W., 540 varas; N. 86 W., 320 varas; N. 45° W., 140 varas; S. 38¼ W., 460 varas; S. 85 W., 280 varas; N. 83 W., 140 varas; S. 28 W., 280 varas; S. 76¾ W., 300 varas, to Powderhorn Bayou, 20 varas wide at its entrance into small lake 300-varas wide, being the point at which southwest line of B. Morales's survey also crosses said bayou by plats herewith accompanying; giving as the result for the survey of Juan Caño grant—total area within lines of survey, 48,665,450 sq. varas, $8,613\frac{78}{100}$ acres; on the south side of Powderhorn Bay, 21,251,398 sq. varas, $3,761\frac{50}{100}$ acres; on the north side of Powderhorn Bay, 13,616,400 sq. varas, $2,412\frac{10}{100}$ acres; superficies of Powderhorn Bay and Bayou in said grant, 13,797,662 sq. varas, $2,440\frac{18}{100}$ acres.

Powderhorn Bayou, from the bar at its mouth, at Matagorda Bay with 3 to 3½ feet water, has depth from 3½ to 10 feet to its entrance into Powderhorn Bay; thence Powderhorn Bay affords 4 to 4½ feet to its west end; from which westwardly, through the bayou and small lakes, there is depth of 3 to 3½ feet water as far as the lines of Caño and Morales's grants extend.

Survey of Grant of Morales.

Began at north corner of Juan Caño survey, a stake in small lake about 500 varas wide and 1,400 varas in length; to bay shore of Matagorda Bay is 1,300 varas, N. 45° E.

To intersection of lower line of a survey of 640 acres for Thomas Wilson is 535 varas, S. 45° E. Ran S. 45° W., 5,140 varas, the west corner of Juan Caño survey; 5,940 varas to a stake in salt marsh of Powderhorn Bay; 6,650 varas across said bay, 710 varas wide; at 10,810 varas a small lake or expansion of Powderhorn Bayou, 300 varas wide; 12,480 varas a stake in prairie for south corner of this survey of B. Morales. Thence N. 45° W., 1,440 varas, to Powderhorn Bayou, 20 varas wide at its entrance into a small lake 300 varas wide; thence along the bank of said lake, and cutting said lake 560 varas; at 1,900 varas a point on high prairie; on same course N. 45 W., at 4,480 varas a stake on prairie for west corner of this survey.

Thence N. 45 E., 8,426 varas, for fourth corner of this survey.

Thence S. 45° E., 2,850 varas, a stake in the prairie for the fifth corner of this survey.

Thence N. 45° E., 4,687 varas, for last corner of this survey, a stake at edge of prairie, on salt marsh or lagoon; N. 44° E., across said lagoon and marsh 900 varas, a shell ridge 220 varas wide; at 1,415 varas, same course, a stake at edge of Bay of Matagorda.

To intersection of upper line of survey of six hundred and forty acres for Fielding Jones is S. 45° E., 634 varas.

Thence from last corner aforesaid of this survey, along the marsh

or lagoon, to place of beginning; containing fifty million four thousand one hundred and ninety (50,004,190) square varas.

Survey of 179½ *Acres for A. M. Gwatney.*

Began at a stake 1,100 varas from the mouth of Powderhorn Bay, on its north side. Thence S. 82 E., 953 varas; S. 35 E., 157 varas, to mouth of said bayou. Thence S. 45 W., 114 varas; N. 80½ W., 140 varas; west 180 varas; S. 37¼ W., 295 varas, to entrance of said Powderhorn Bayou into Powderhorn Bay; N. 26 W., 95 varas; S. 62 W., 205 varas; N. 82¼ W., 605 varas; N. 24 E., 485 varas; N. 22 W., 119¾ varas, a stake on edge of bayou; whence south end of north mat (one of three mats) bears S. 45° W. about 300 varas. Thence N. 45 E., 600 varas, to edge of Bay of Matagorda; S. 8¾ W., 12½ varas, to place of beginning.

Survey of D. N. White, 320 *Acres.*

Begin at upper corner of survey of A. M. Gwatney for 179½ acres. Thence N. 54 W., 1,350 varas, a post whence lignum vitæ 6 inches in diameter, marked *X*, bears S. 45° W., 105 varas. Thence S. 45° W., 795 varas a bayou 50 varas wide, at 1,325 varas a post in the prairie for west corner of this survey. Thence S. 45° E., 700 varas; S. 85 E., 865 varas, a post on salt marsh of Powderhorn Bay; N. 45 W., across bayou 300 varas wide, 400 varas to a stake in edge of said bayou, a corner of A. M. Gwatney's survey of 179½ acres; at 1,000 varas in same course, N. 45° E., to place of beginning.

Survey of 140½ *acres for A. M. Gwatney.*

Begin at a post the upper corner of D. N. White survey of 320 acres 72 varas from edge of bay, a lignum vitæ 6 inches diameter, S. 45 W., 33 varas, marked *X*. A palmetto, N. 76 W., 22 varas; S. 45° W., 795 varas, a bayou 50 varas wide, 1325 varas; same course with D. N. White's upper line a post in prairie a corner of said White's survey. S. 85° E., 865 varas, a post on salt marsh of Powderhorn Bay, a corner of said White's survey. S. 79 W., 650 varas; S. 71½ W., 410$\frac{1}{10}$ varas, to stake in bank of Powderhorn Bay, for south corner of this survey. Thence N. 45° W., 1131 varas, a stake on lower line of survey of 476 acres for J. T Dillon, the west corner of this survey; N. 45° E., 832 varas, a bayou 40 varas wide, 1642 varas to Bay of Matagorda, whence a stake S. 45° W., 65 varas. From said stake a lignum vitæ marked *X*, bears S. 70° W., 22 varas. Thence S. 56½ E., 255 varas, to beginning.

Survey of 960 *acres for J. Callighan.*

Begin at south corner of 140½ acres, survey for A. M. Gwatney. Thence along the bank of Powderhorn Bay S. 71½, W. 201$\frac{9}{10}$ varas; N. 76½ W., 774 varas; S. 41 W., 486 varas; S. 35½ E., 483 varas; S.

32½ W., 540 varas; S. 35½ W., 684 vs.; S. 60½ W., 774 varas; S. 65 W., 140 varas for south corner of this survey. Thence N. 45 W., 2703 varas, a stake in prairie for west corner of this survey.

Thence N. 45° E., 1267, to west corner of a survey for 640 acres for Thos. Wilson.

Thence S. 45° E., with line of said Wilson's survey, 981 varas to said Wilson's south corner.

Thence with a line of said Wilson's survey, N. 45° E., 390 varas to west corner of a survey of 476 acres for J. T. Dillon.

Thence with a line of said Dillon's survey 820 varas to Dillon's south corner.

Thence N. 45° E., with a line of said Dillon's survey, 1633 1/10 varas for north corner of this survey, and west corner of a survey of 140½ acres for A. M. Gwatney.

Thence S. 45° E., 1131 varas, to place of beginning.

Survey of 476 *acres of J. T. Dillon.*

Begin at the north corner of a survey 140½ acres for A. M. Gwatney.

Thence S. 45° E., at 770 varas, a bayou 40 varas wide, 1642 varas a corner of said A. M. Gwatney's survey; 3275 1/10 varas to stake in prairie, the south corner of this survey.

Thence N. 45 W., 820 varas, a stake in prairie on lower line of survey of 640 acres for Thos. Wilson, the west corner of this survey.

Thence N. 45° E., 3284 9/10 varas, to bay shore of Matagorda Bay, (in this line at 2450 varas crossing a marsh and small lake 500 varas wide).

Thence down bay with its meanders to place of beginning, crossing a bayou 20 varas wide at 280 varas from said beginning corner.

Survey of 640 *acres for Thos. Wilson.*

Begin at the upper corner of a survey for J. T. Dillon for 476 acres.

Thence S. 45° W., at 335 varas, a marsh and small lake 500 varas wide; 3654 9/10 varas, a stake on prairie for south corner of this survey.

Thence N. 45° W., 981 varas for west corner of this survey, a stake in prairie.

Thence N. 45° E., 3754 varas for north corner of this survey on bank of Matagorda Bay, which is east corner of a survey for Fielding Jones.

Thence with the meanders of the bay to the place of beginning.

Survey of 640 *acres for Fielding Jones.*

Beginning at the north corner of survey of 640 acres for Thos. Wilson, a stake in the bay.

Thence with Wilson's N. W. boundary, S. 45° W., 3571.5 varas,

a stake in the prairie; at 1760 varas on this line a marsh and small lake 500 varas wide.

Thence N. 45 W., at 950 varas to the S. E. boundary of a survey of ⅓ of a league for J. A. White, a stake in the prairie.

Thence N. 45° E., with White's S. E. boundary 4031.6 varas to the shore of Matagorda Bay and White's east corner, from which the east corner of Huck's house bears N. 83° 30′ W., 27 varas.

Thence down the bay with its meanders to place of beginning.

Survey of ⅓ league for S. A. White.

Beginning at north corner of a survey of 640 acres for Fielding Jones, at 364 varas a high ridge; 2624 varas a bayou 10 varas wide, 5444 varas, a stake in the prairie for south corner of this survey.

Thence N. 45° W. to line of survey for Benito Morales, 634 varas; 1444, a stake in prairie for west corner of this survey.

Thence N. 45° E., 4370 varas, a marsh 700 varas wide; 5070, a high ridge 220 varas wide; 5290 varas, a marsh 200 varas wide; 6100 varas to shore of Matagorda Bay.

Thence southeastwardly to place of beginning, following meanders of Bay.

DISTRICT COURT OF THE UNITED STATES,
District of Texas, Galveston.

January Term, 1856.

THE STATE OF TEXAS,
County of Calhoun.

I, Henry Beaumont, County Surveyor of the County of Calhoun, State aforesaid, hereby certify, under the oath of my office, that the foregoing field notes, together with all the facts set forth in the same, having relation to the grants of Juan Cano and Benito Morales, and of locations and surveys thereupon, are true and correct, and that the plats accompany the same are drawn in accordance with the calls and land-marks therein described. And I further certify that, in the course of the survey aforesaid, I was unable to identify any land-mark or corner other than as described in the said field notes, called for in the grants of said Cano and Morales, except the "Mat" Artialga, to which reference is fully made in the above field notes.

Given under my hand at my office, at Indianola, this 29th day of May, 1855.

HENRY BEAUMONT,
County Surveyor, Calhoun Co.

Document A,

Accompanying Report of Surveyor.

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On the 6th day of January, A. D. 1855, came the parties aforesaid by their attorneys, and thereupon came on to be heard the motion of the said defendants, filed February 26th, 1855, to appoint a surveyor in their case. Upon consideration whereof, it is now here ordered that the District Surveyor of Calhoun County be, and he is hereby appointed surveyor in this case. And it is ordered that he go upon the Morales and Juan Cano grants, described in the plaintiff's petition, and make a survey of the said grants, and also of all the locations and surveys made upon the said grants under which the said defendants claim, as either of the said parties may direct, first having given at least ten days' notice to the said parties or their attorneys of the time of commencing said surveys; and that he return to this Court three plats of the said grants, locations and surveys, describing the true and accurate boundaries thereof, duly certified on or before the first Monday of January next.

The foregoing is a true copy, taken from the minutes of the District Court of the United States for the District of Texas, at Galveston, I certify.

Witness my hand, and the seal of said Court, this 18th day of April, A. D. 1855.

[SEAL.] JAMES LOVE, *Clerk.*

Document B,

Accompanying Report of Surveyor.

BURNLEY and PORTER,
vs.
WILLIAM M. COOK *et als.* }

Field notes of the Juan Cano grant as set forth and described in plaintiff's title.

The land surveyed for Juan Cano, is situated on the west bank of the "Laguna Madre" of Matagorda: beginning at a stake on the

bank of said Laguna, the same being the third and last land-mark of the league surveyed for Santiago Gonzales, and first of this survey, thence to the south 45° west, with the line of the said Gonzales. At 240 varas, there is a mata called Antiaga, where stands a stake from which, to the east, two varas distant, there is a hackberry marked with letter *A*, being six inches diameter; thence following the same line to the south 45° west, 7,090 varas to a stake in the prairie, which serves as second land-mark for both surveys; thence to the north 45° west, with the lower line of Faustino Alvarado, 7,600 varas to a stake in the prairie, being the third land-mark of this survey, and of that of the said Alvarado; thence north 45° east, 5,140 varas to a stake set on the bank of said Laguna for the fourth and last land-mark of this survey; and thence, following the meanders of the Laguna to the beginning point, completing an area of fifty-six million of square varas, equal to one league of pasture, in consequence of its being, at least in its one-half, occupied by salt bays, and, at the same time, wanting timber and fresh water, its configuration being as in duplicate map.

Field notes of the Benito Morales grant, as set forth in plaintiff's petition, Albert T. Burnley *vs.* Samuel A. White, William M. Cook *et als.*

"One league of land situate and lying on the Lagoon of Matagorda, on the western margin, and bounded as follows, to wit: Commencing at a stake upon the deep break of said lagoon, being the fourth and last landmark of the sitio surveyed for Juan Caño, and the first of this survey; thence south 45° west, with the line of said Caño 5,140 varas, to the third landmark of the aforementioned Caño, and Faustino Alvarado, and following said line with the depth of Alvarado 3,521 varas, to the second landmark of the aforesaid Alvarado, and third of the sitio surveyed for Cleto Garcia; thence with the same line with the depth of Cleto Garcia to his second landmark and third of Pedro Garcia, the line running 3,537 varas; thence following the said line with the depth of the aforementioned Pedro Garcia, two hundred and sixty varas, where a stake was driven in the plain for the second landmark of this survey. Thence north 45° west 4,880 varas, where another stake was driven in the plain for the third landmark of this survey. Thence north 45° east, to the third landmark of Don Francisco Leon, and it serves for the fourth landmark of this survey. Thence south 45° east, with the depth of said Leon, 2,850 varas, to the second landmark of the aforementioned Leon, which serves as the fifth landmark of this survey. Thence with the line of the aforementioned Leon, north 45° east, four thousand six hundred and eighty-seven varas, to the first landmark of said Leon, which is the sixth and last landmark of this survey, being a stake driven upon the bank of the aforementioned main lagoon, and south 45° west at the distance of seventy varas, there is a draw well, called John MacHenry's well, thence following the bends of the lagoon to the place of beginning.

The above are the field notes contained in the grants to Juan Caño and Benito Morales (22), and survey made on same accordingly.

W. P. BALLINGER,
Att'y for A. T. Burnley.

F. H. MERRIMAN &
L. A. THOMPSON,
for Def't.

Document C,

Accompanying Report of Surveyor.

ALBERT T. BURNLEY, vs. MOORE AND LIBBALD. } No. 220.

SAME, vs. SAM'L A. WHITE and others. } No. 213.

BURNLEY & PORTER, vs. WM. M. COOK *et als.* } No. 441.

Messrs. Ballinger and Jones, attorneys for plaintiff, you will take notice that the undersigned, one of the defendants in this cause, in accordance with an order of the Hon. District Court of the United States for Texas, dated 6th January, 1855, filed February 27th, 1855, in pursuance of which, said defendant on the fifth day of May next, 1855, will proceed with the District Surveyor of Calhoun, named in said order, to make the said surveys as stipulated therein, with the plats, and upon the so called Juan Caño and Morales Grants, also the locations of the said defendants, with a survey and plat of the same, following the boundary and conflict, if any, with said land grants of said Caño and Morales claimed by plaintiffs.

INDIANOLA, *April 24th*, 1855.

The above notice is respectfully submitted for the consideration of the attorneys of the said plaintiffs, residing in Galveston.

WM. M. COOK,
for himself and co-defendants.

Notice of the above deed and acknowledged, April 26th, 1855.

W. P. BALLINGER,
Att'y for Plaintiff.

For Plat of Survey, see p. 87.

THE STATE OF TEXAS,
County of Calhoun.

I certify this to be a correct plat of the grants of Juan Caño, and Benito Morales, and of the locations and surveys made thereupon, with their corrections with the Bays of Matagorda, and Powder Horn, and Powder Horn Bayou, Indianola, May 29th, 1855.

HENRY BEAUMONT,
County Surveyor, Calhoun Co.

And also produced the said Henry Beaumont, who being duly sworn, testified as follows:—

Testimony of Henry Beaumont.

I made the survey of the land in controversy under the order of the Court, in the month of May of last year, and returned my report of the survey into Court in this cause. I found in the survey of the grant to Benito Morales, over two leagues of land. I made the map accompanying said report. The chain-carriers were Woodward, Nance, a boy named Wilkinson, and a Dutchman, whose name is not recollected. Woodward has gone to California, and the others are at Indianola. I ran out the length of the lines called for by the field-notes, and stopped when the field-notes were exhausted. The grant contains fifty millions four thousand one hundred and ninety square varas. There is not over a laber of marsh and water on the tract. The boundaries of S. A. White's third of a league are correctly represented on the map. I have resided in Indianola since 1849. Was on White's tract in 1846. The German merchants were then keeping a store on the tract, and German emigrants were camping on it. Foster has resided on the Fielding Jones tract since 1851. There was an improvement on the back part of White's tract in 1846; does not know by whom it was made. Points out on the map the situation of White's house, which was thirty or forty yards below the upper line of his survey, and Major O'Brien's house, which was two hundred and fifty or three hundred yards below White's house. In the month of April, 1849, or earlier, the United States established a depot at Indian Point, now called Indianola. I did not know Cook as residing there earlier than 1849. Saw him there in 1847, but did not know where he resided, as I did not go there to live till 1849. I stopped the survey at the point where there was a break in the land, because I had exhausted the field-notes, and the call was for the *barvanca*, or deep break, and that place was the only one near answering to the call, and I was following the field-notes strictly. I also continued the line to the Bay of Matagorda, as will be found in my report. If the lines had been extended to

the Bay, the grant would include four million square varas more than I have before stated.

Being shown the sketch or map of the outlines of De Leon's colony, says: He made the map after examining Martin de Leon's colony contracts, and as witness understands the lines laid down therein. His first contract commences on the river Guadalupe, as shown on the map. The land in controversy here is not in De Leon's colony, as shown by his first contract, and by the line drawn from the Guadalupe to the La Vaca rivers on the map, which is correct. Power and Hewetson's contract embraced the coast leagues, and De Leon's lay above and beyond the land in controversy, as witness understands the calls thereof by the map. The map was then put in evidence before the jury, and is as follows:—

(Map, page 89.)

Defendants also offered and read in evidence to the jury a certified copy from the Land-office of the State of Texas of Samuel A. White's headright certificate and survey, which is as follows, to wit:—

Samuel A. White's Location.

No. 37.

This is to certify that Samuel A. White has appeared before us, the Board of Land Commissioners for the County of Jackson, and proved according to law that he arrived in Texas in the year one thousand eight hundred and thirty, and that he is a single man, and entitled to one-third of a league of land upon the condition of paying at the rate of three dollars and fifty cents for every labor of irrigable land; two dollars and fifty cents for every labor of temporal or arable land; and one dollar and twenty cents for every labor of pasture land which may be contained in the survey secured to him by this certificate.

Given under our hands this 20th day of January, 1838.

PATRICK USHER,
President.

FRANCIS M. WHITE,
JOHN ANDREWS,
Associate Commissioners.

Attest: J. S. MENNIFEE,
Clerk.

(Plat—page 90.)

Survey made for Samuel A. White, of one-third of a league of land, situated on the southwest side of Matagorda Bay, in the County of Victoria, it being the quantity of land to which he is entitled by

virtue of a certificate, No. 37, issued by the Board of Land Commissioners for the County of Jackson.

Beginning at the north corner of a survey made for Fielding Jones, a post on the margin of the bay, from which a lignum-vity tree, 7 inches in diameter, marked J W, bears S. 45° W. 40 varas.

Thence up the bay with its meanders, N. 35° W. 500 varas; N. 23 W. 300 varas; N. 9 W. 700 varas; N. 26 W. at 131 varas, a post, from which a double lignum-vity tree, six inches in diameter, marked H, bears S. 16 W. 53 varas, and another lignum-vitæ tree, 10 inches in diameter, marked = bears N. 11 W. 65 varas.

Thence, S. 45 W., at 830 varas, a ridge with timber on it; at 1050 varas, a marsh; at 4870 varas, a bayou, full of rushes, bearing N. W.; at 6100 varas, a post in the prairie.

Thence, S. 45 E., at 1444 varas, a post from which a grove bears S. 27 E., and a do. bears S. 25 E.

Thence, N. 45 E., at 2,400 varas, a rush lake; at 2,820 varas, a bayou, 10 varas wide; at 5,080 varas, a high ridge, at 5,444 varas, the place of beginning.

The above survey contains $8\frac{3}{10}$ labors of pasture land.

W. F. WHITE, and
D. N. WHITE,
Chairmen.

I certify, under the oath of my office, that the foregoing survey has been made according to law, and that the limits, boundaries, and corners, with the marks natural and artificial, are truly described in the above plat and field-notes, this sixth day of February, A. D. 1842.

CHAS. M. CREANER,
County Surveyor, Victoria County.

GENERAL LAND-OFFICE, AUSTIN, *March* 26, 1850.

I, George W. Smyth, Commissioner of the General Land-office of the State of Texas, do hereby certify that the foregoing is a correct copy of the original, now on file in this office.

In testimony whereof, I hereunto set my hand and affix the seal of said office, the date above written.

GEO. W. SMYTH,
Commissioner.

Defendants also produced and read in evidence to the jury, certified copy from the Land-office of the State of Texas, of Fielding Jones' headright certificate, survey, and assignment thereof to William M. Cook, which is as follows:—

Survey and Assignment of Fielding Jones.

REPUBLIC OF TEXAS,
County of Victoria.

No. 5. Class 2d.

This is to certify that Fielding Jones appeared before us, the Board of Land Commissioners for the county aforesaid, and proved, according to law, that he arrived in this republic in June, eighteen hundred and thirty-seven; that he is a single man, and having never received a certificate for the quantity of land for which he applies, he is entitled to a conditional grant of six hundred and forty acres of land, in accordance with an act of Congress passed December 14th, one thousand eight hundred and thirty-seven. Given under our hands at Victoria, this 2d day of August, 1841.

[L. S.] A. S. McDONALD,
Chief Justice,
and ex-officio Pres'd Board Land Commissioners.

WM. GAMBLE,
H. LEDBETTER,
Associates.

Attest: JAMES INGRAM,
Deputy Clerk,
and ex-officio Deputy Clerk Board Land Commissioners.

THE STATE OF TEXAS,
County of Victoria.

No. 62. 2d Class.

This is to certify that Fielding Jones appeared before us, the Board of Land Commissioners for the County of Victoria, and proved according to law that he arrived in Texas in the year 1837, and that he is a single man, and also proved to us that he had obtained a conditional certificate No. 5, 2d class, from the records of the aforesaid county, and he having never received an unconditional certificate for the quantity of land for which he now applies, he is entitled to an unconditional certificate for 640 acres of land, his headright claim, which is hereby granted him by the undersigned Board of Land Commissioners, No. 62, and class the 2d. Given under our hands and the seal of the County Court, at Victoria, this the 20th day of August, A. D. 1849.

[L. S.] WM. RAYLAND,
WINA TRAYDER,
PETLR TEAL,
Commissioners.

Attest: G. WM. GARRETT, *Clerk,*
and ex-officio Clerk Board Land Commissioners.

Survey of six hundred and forty acres of land for Fielding Jones, situated on the west side of Matagorda Bay, immediately below Indian Point, County of Calhoun, District of Victoria, it being the quantity of land to which he is entitled by virtue of certificate No. 5, class 2d, issued by the Board of Land Commissioners for the County of Victoria. Beginning at the north corner of a survey of 640 acres of land made for Thomas Wilson, a stake on the bay shore from which a lignum-vitæ tree, 3 inches in diameter, bears S. 85° W. 88 varas. Thence S. 45° W., with Wilson's N. W. boundary 3571.6 varas to stake in prairie. Thence N. 45° W. 950 varas to the S. E. boundary of a survey made for S. A. White, a stake in prairie. Thence N. 45° E. with White's S. E. boundary 4031.6 varas to the bay shore and White's east corner, a stake from which a stake marked W bears S. 45° W. 36 varas, and the east corner of Huck's house bears 88° 30′ W. 27 varas. Thence down the bay, with its meanders, to the place of beginning.

Surveyed June 25, 1849.

H. A. FRY,
PETER NELSON,
Chainmen.

I, S. A. White, do solemnly declare under the oath of my office, that the foregoing survey was made according to law, and that the limits, boundaries and corners, with the marks natural and artificial, are truly described in the above plat and field-notes, and the survey was made June 25th, 1849.

S. A. WHITE,
D. Surveyor.

I certify that I have examined the within plat and field-notes, and find them correct, and the survey made according to law.

EDWARD LINN,
District Surveyor, Victoria District.

STATE OF TEXAS,
County of Victoria.

Know all men by these presents, that I, Fielding Jones, of the State and county aforesaid, for and in consideration of the sum of five hundred dollars to me in hand paid by William M. Cooke, of Calhoun County and State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened and conveyed, and by these presents do grant, bargain, sell and convey to the said William M. Cooke, an undivided half of a claim of six hundred and forty acres of land upon Matagorda Bay, in Calhoun County, it being the location made by virtue of a certificate granted to me as a head-right, and adjoining the town of Indian Point. It is distinctly understood that this conveyance is intended to convey whatever interest

I may have in and to the said one undivided half of the land aforesaid, without further *warranty*.

In testimony whereof I hereunto set my hand and scroll by way of seal, this the 27th day of June, 1848, at Victoria.

F. JONES. [SEAL.]

Witness:
A. C. HYDE.

STATE OF TEXAS,
County of Victoria.

Before me the undersigned, Notary Public in and for the County of Victoria and State of Texas, personally came F. Jones, who is personally known to me, and a party to the foregoing deed of conveyance, bearing date on the 27th day of June, A. D. 1848, and acknowledged the same to be his act and deed for the purposes therein specified.

[L. S.] In testimony whereof I hereunto set my hand and official seal in office at Victoria, this 27th day of June, A. D. 1848.

JAMES INGRAM,
Notary Public.

GENERAL LAND-OFFICE, AUSTIN, *April 1st*, 1850.

I, Geo. W. Smyth, Commissioner of the General Land-office, State of Texas, do hereby certify that the foregoing is a true copy of the original on file in this office.

In testimony whereof I hereunto set my hand and affix the seal of said office the day and date above written.

G. W. SMYTH,
Commissioner.

Defendants also produced and read in evidence to the jury, certified copy from the land-office of the State of Texas of Thomas Wilson's land-warrant assignments thereof, down to William M. Cook, and survey made thereunder, which is as follows:—

Survey of Wilson assigned to Cook.

Know all men by these presents that I, Thomas Wilson, a resident of the Republic of Texas, have, and by these presents do constitute Charles A. Miller (also a resident of Texas) my true and lawful attorney, for me and in my name to receive at the Land-office any land scrip that I may be entitled to for services done in the army (as my discharge will show), and I also give him full power to sell, grant, and convey all such scrip of land or lands for such price or prices or sum or sums of money, and to such person or persons as he the said Miller shall think fit and convenient, and in my name to sign, seal, and execute and deliver such deeds and conveyances as may be necessary for the conveyance of the same and the disposal

thereof, hereby ratifying, confirming, and allowing all such deeds, conveyances, bargains, and sales which shall at any time hereafter be sealed and executed by my said attorney touching and concerning the premises to be lawful and according to law.

In witness whereof I have hereunto set my hand and seal this 16th December, eighteen hundred and thirty-seven (1837).

THOMAS WILSON.

Witness present.

Attest: G. BORDEN, Jr.,
JOHN CARLES,
F. FITCH.

REPUBLIC OF TEXAS,
County of Harrisburg.

Be it known that on this 9th day of January, in the year 1838, before me, Andrew Briscoe, Chief Justice of the County, and ex-officio a Notary Public duly commissioned and sworn, personally came and appeared John Carles, of this county, to me personally known, who being sworn, on oath said, that he was present at the execution of the above annexed power of attorney, that the same was executed in good faith, that he signed the same as a witness, and that he recognizes his name thereunto signed as his own proper handwriting.

To certify which as duly proven for all purposes for the [L. S.] authenticity thereof, I grant these presents under my hand and the seal of the county, at Houston, the day and year first aforesaid.

A. BRISCOE,
C. J. H. C., ex-off. Not. Pub.

REPUBLIC OF TEXAS.

No. 1,410. 640 *acres.*

Know all men to whom these presents shall come, that Thomas Wilson having served faithfully and honorably for the term of thirteen months, from the nineteenth day of September, 1836, until the fourteenth day of November, 1837, and being honorably discharged from the army of Texas, is entitled to six hundred and forty additional acres bounty land, for which this is his certificate. And the said Thomas Wilson, or att'y, is entitled to hold said land, or to sell, alienate, convey, and donate the same, and to exercise all rights of ownership over it. This certificate will be transferable by indorsement with a deed before any competent authority, with witnesses to the same.

In testimony whereof I have hereunto set my hand at Houston, this 29th day of Dec'r, 1837.

BARNARD E. BEE,
Secr'y of War.

For a valuable consideration, say two hundred and fifty dollars, I hereby assign all my right, title, and interest to the within land to Wm. Beardslee, his heirs, assigns, or executors, as witness my hand and seal, Houston, Jan'y 9th, 1838.

CHAS. W. MILLER. [SEAL.]

REPUBLIC OF TEXAS,
County of Harrisburg.

Know all men by these presents, that I, Charles W. Miller, late a soldier, for and in consideration of the sum of two hundred and fifty dollars to me in hand paid by William Beardslee, the receipt whereof is hereby acknowledged, have this day bargained, sold, enfeoffed, and conveyed, and by these presents do bargain, sell, enfeoff, and convey to William Beardslee, his heirs or assigns, six hundred and forty acres of land, to be hereafter located, selected, and surveyed when and where the said William Beardslee may think proper, and according to law: said land so sold as aforesaid is the land coming to me, the said C. W. Miller, for military services rendered, as will appear by accompanying certificate of land number 1,410, and dated Houston, Dec'r 29, 1837, and signed by the Honorable Barnard E. Bee, Secretary of War, which said certificate I have this day transferred in writing on the back thereof to the said William Beardslee, his heirs or assigns, to have and to hold the aforesaid land and premises against the lawful claims of any other person whomsoever, and free of all manner of incumbrances whatsoever.

In testimony whereof I have this day hereunto set my hand and seal, the ninth day of January, eighteen hundred and thirty-eight (Jan'y 9th, 1838).

[L. S.] CHAS. W. MILLER,

Signed, sealed and delivered in presence of undersigned,

FRANCIS R. LUBBACK,
D. W. CLINTON HARRIS.

A. BRISCOE,
Chief Justice of Harrisburg County, and ex-officio Notary Public.

Survey of 640 acres of land for Thomas Wilson, situated on the S. W. side of Matagorda Bay, in the County of Victoria, it being the quantity of land to which he is entitled by virtue of land warrant No. 1410, dated at Houston, 29th December, 1837.

Beginning at the north corner of a survey made for John T. Dillon, a post from which a lignum-vitæ, 3 in. in diameter, marked X, bears S. 45° W. 80 varas. Thence up the bay with its meanders N. 43 W. 700 varas; N. 22 W. at 300 varas, the last corner of a survey made for Fielding Jones, a post from which a lignum-vitæ tree 7 in. diam. marked X, bears S. 82 W. 88 varas. Thence S. 45 W. with said Jones' survey, at 3754 varas, a post on Jones' S. E.

boundary line. Thence S. 45 E. at 981 varas, a post on the N. W. boundary line of a survey made for J. T. Dillon. Thence N. 45° E. with said Dillon's line at 3610 varas, the place of beginning.

CHARLES FRAZER,
DEAGO INCARNACION,
Chainmen.

I certify under the oath of my office that I have examined the foregoing field-notes and find them correct, and the survey made according to law.

CHAS. H. CREANER,
County Surveyor V. C.

STATE OF TEXAS,
County of Galveston, May 26th, 1846.

Know all men by these presents, that for and in consideration of the sum of two hundred and thirty-five dollars to me in hand paid by William M. Cook, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, I, the said William Beardslee for myself, my heirs and assigns, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said William M. Cook, a certificate for six hundred and forty acres of bounty land, granted to Thomas Wilson, as per certificate No. 1410, being the same sold and assigned by him, the said Thomas Wilson, to Charles W. Miller, as per deed of conveyance dated 16th (sixteenth) day of December, 1837 (eighteen hundred and thirty-seven), and by said Charles W. Miller sold to him, the said William Beardslee, Jan'y 9th, 1838.

To have and to hold said tract of land, with all and singular the appurtenances thereunto belonging, or in anywise appertaining, to the said Wm. M. Cook, his heirs, executors, administrators and assigns, forever. And the said William Beardslee, for himself, his heirs, successors and assigns, covenants and agrees to and with the said Wm. M. Cook, his heirs, executors, administrators and assigns, the title to the aforesaid tract or parcel of land, with the appurtenances, to warrant and forever defend against the claim or claims of all persons lawfully claiming or to claim the same or any part thereof, by, from, or through, or under me.

In witness whereof, the said William Beardslee hath hereunto set his hand and scroll in lieu of seal, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and forty-six.

WM. BEARDSLEE. [SEAL.]

Signed, sealed and delivered in presence of

STATE OF TEXAS,
County of Galveston.

Before me, John S. Jones, Chief Justice of the county aforesaid,

on this day personally appeared Wm. Beardslee, to me known, who acknowledged a certain instrument of writing, on the other side hereof written to be his act and deed for the purposes therein set forth and declared.

To certify which I grant these presents, and my hand and the seal of the County Court of said County, this the 25th day of May, A. D. 1846.

[L. S.] JOHN S. JONES,
Chief Justice.

CITY OF AUSTIN,
General Land-office.

I, Stephen Crosby, Chief Clerk in the General Land-office of the State of Texas, hereby certify the foregoing to be true copies of the originals on file in this office.

Given under my hand and the seal of said office this 23d day of March, A. D. 1849.

[L. S.] J. CROSBY,
Chief Clerk.

GEN'L LAND-OFFICE,
Austin.

I, Geo. W. Smyth, Commissioner of the General Land-office of the State of Texas, do hereby certify that the foregoing is a correct copy of the original, now on file in this office.

In testimony whereof I hereunto set my hand and affix the seal of said office the date above written.

GEO. W. SMYTH,
Commissioner.

Defendants also produced and read in evidence to the jury, translated copy from the land-office of the State of Texas of the original contracts and other documents of the colony of Martin de Leon, which are as follows:—

Original Contracts of Martin De Leon.

Number 21.

It became my duty officially to inform your excellency that a number of foreigners are settling themselves in the new town called Guadalupe and Victoria, and that up to this date none of the families contracted for to colonize at that place have made their appearance, with the exception of that of the empresario, Mr. Martin de Leon. I know not whether these strangers have come into the country and settled in accordance with the conditions prescribed by the sovereign

Congress for all foreigners, or whether it has been done clandestinely, but it is certain that the said Martin de Leon did engage with the next excellent provincial delegation, the then government of Texas, to found and build that town with Mexican citizens from the town of Cruillas; these as well as the empresarios have failed in the engagements; the town of Guadalupe is within my jurisdiction, and as yet I have received no information in relation to the class of persons who have arrived or settled, or the place whence they came, and with the view to prevent this clandestine introduction of foreigners into the territory of the United Mexican States, in compliance with the resolution of his Excellency, the President of the Honorable Legislature of the free State of Coahuila and Texas, transmitted to me by your excellency under date of the 15th November, I hope that with the least possible delay your excellency will communicate orders to me on this subject for my government, with suitable instructions for the rule of conduct I am to observe towards those foreigners, informing me what requisites are necessary to entitle them to admission by the supreme authorities, as they have settled in the country, in my opinion, without the approbation of the government. God and liberty. March 26, 1825.

JUAN JOSE HERNANDEZ.

To his excellency the acting Governor of the State of Coahuila and Texas.

SALTILLO, *May* 17, 1825.

Present the foregoing to the Political Chief of the Department of Texas, that he may in continuation communicate to me all the information he is possessed of in relation to the contract for settling families which Mr. Martin de Leon made with ex-provincial delegation, the number of families he offered to settle, the place at which he was to settle them, the terms upon which they were to be settled, and such other particulars as he may deem relevant in this case, remitting them to me.

GONZALES.

MOST EXCELLENT SIR: During the last year the citizens of Martin de Leon petitioned the ex-provincial delegation of Texas for permission to colonize on the opposite side of the river Guadalupe, south of the Atascueite road, and at the place called cypress grove (El Saburial), within the territory of this department, offering to found a town called Guadalupe de Victoria, and settle it with families which he would bring from the State of Tamaulipas, without designating the precise number, but presenting a list of the names of upwards of thirty persons, or heads of families, who had at that time resolved to colonize at said place, petitioning also for exemption from the tax on the wild horses taken, and from other taxes which I do not now recollect, not having before me the proceedings and acts of the ex-

provincial delegation above mentioned, into which was copied the terms upon which the said Martin de Leon was permittted to colonize. It occurs to me that this individual did not contract to colonize any specific number of families, nor was he limited as to time for the organization and completion of his colony; but of this I am certain, that many months elapsed after his petition had been granted before he removed to the place appointed for his colony, when he brought with him his own property, consisting of droves of horses, cattle, sheep, &c., together with his families of his married sons, but until the present time none of the other families which he promised to bring have joined them, and although I understand that some foreigners are desirous to settle in the said colony, I do not believe that the said Martin de Leon is authorized by his contract to admit them without the knowledge and permission of the government, although they might possess all the qualifications required by law. This is all the information I am in possession of, or have the power to communicate to your excellency, in reply to your excellency's decree of the 17th of May last, accompanying the representation, dated the 25th March, of the constitutional alcalde of the Presidio de la Bahia in the preceding official communication. San Fernando de Bexar, 10th June, 1852.

JOSE ANTONIO SANCEDO.

To his Excellency,
RAFAEL GONZALES,
Governor of the State of Coahuila and Texas.

SALTILLO, 14*th July*, 1825.

Lay the foregoing documents before the Honorable the Baron de Bastrap, member of the legislature for the Department of Texas, together with copies of all the papers relative to the matters in question, and request him to be pleased to communicate to me such information as he may possess on the subject.

GONZALES.

MOST EXCELLENT SIR:—

In compliance with your Excellency's foregoing decree, I have the honor to present herewith a copy of the petition presented by the citizen Martin de Leon to the ex-provincial delegation of Texas, praying for permission to colonize *praying for permission to colonize* on the banks of the river Guadalupe with a number of families, a list of whom he also presented, a copy of which is herewith annexed, offering to found a town under the name of Guadalupe de Jesus Victoria, which was acted upon by the ex-provincial delegation in their resolution of the 13th April, 1824, as appears by the copy of the same

herewith annexed; and this is all, which occurs to me, I have to communicate to your Excellency upon this subject.

Most Excellent Sir,

EL BARON DE BASTRAP.

SALTILLO, *July 30th*, 1825.

TO THE MOST EXCELLENT PROVINCIAL DELEGATION:—

Citizen Martin de Leon, a resident of the town of Cruillas, in the province of New Santander, in due and lawful form most respectfully represents to your honorable body and saith, that inasmuch as the principal object of the nation is to establish peaceable relations and to settle the uncultivated lands and uninhabited wilds of Texas, from which will result the progress of every branch of industry, resources of wealth, and development of its topographical advantages, and, above all, affords a means of enlightenment and a knowledge of the divinity of the Lord our God, that he may be known and worshipped and praised in the most remote and dreary deserts of this North America, I therefore pray your Excellencies to have the goodness to grant me permission to found a town with a public square and streets on the river Guadalupe, at a distance of about ten leagues beyond La Bahia del Esperitu Santo, under the glorious appellation of Town of our Lady of Guadalupe de Jesus (Nuestro Senora de Guadalupe de Jesus). For the purpose of establishing the said town, I have solicited and have now at my disposal forty-one inhabitants, all with families, as appears by the annexed list of those settlers who, with myself, have resolved to settle those lands up at our own expense, which arrangement I have used great exertion to effect in this manner, in order to contribute as much as possible to the benefit of the State. The advantages which must accrue to the nation from the settlement of this town are evident; it will facilitate trade and commerce, afford protection to travellers, serve as a point of defence against our enemies, and offer facilities and the means of chastising them and commanding their respect. Aware of your Excellencies' desire to promote the general good of the Nation and of the State, I feel confident in the assurance that your hon. body will not only accede to my proposition, and afford me every aid to accomplish an undertaking at once necessary and beneficial, but that your Excellencies will also use their influence with the higher authorities to obtain such favors and exclusive privileges and right, as well of a private as of a general nature, as regard the settlement and the settlers, as the permission of the laws of the empire will permit. I therefore pray your honorable body may be pleased to entreat the Supreme Congress to grant to me the land, waters, salt-licks, and lakes and wild horses, and permit the planting of all kinds of useful seeds, free from all duties for the term of ten years, for the benefit of the settlers, in consideration of the imminent dangers to which they will be exposed and the difficulties they will have to encounter. Therefore I

pray your Excellencies be pleased to grant the prayer of this my petition, which is not only just, but advantageous to the country. I make oath that this is free from all malice.

MARTIN DE LEON.

To the Hon. the Provincial Delegation, San Fernando de Bexar.
April 8th, 1824.

SAN FERNANDO DE BEXAR, *April 13th*, 1824.

The Right Honorable the provincial delegation having before them the foregoing petition with the list accompanying, and having received and admitted to their consideration in pursuance thereof, and in view of the advantages to be derived by augmenting the population of this province by raising stock, and by the promotion of arts and manufactures, they have directed that the prayer of the petition be granted, subject to the rules and regulations prescribed by our resolution of this date in relation to this matter.

In testimony whereof, the individuals composing this delegation have signed their names to this provincial decree. Thus was it resolved the date above written.

(A copy.)

EL BARON DE BASTRAP,
JOSÉ ANTONIO SANCEDO.

RAMON MUZQUEZ,
Member Sec'y.

List of the Individuals who join me to settle the town of Our Lady of Guadalupe, Province of Texas.

Citizens.	Married.	Single.
Fernando de Leon,	1	One male child.
Sylvester de Leon,	1	
Felix de Leon,		1
Agapite de Leon,		1
José Ma. de las Casas,	1	
A son of the same,		1
Victoriano Olivares,	1	
Three single men, sons of the same,		3
Gabriel de Olivares,	1	4 sons and one woman.
José Maria Cantie,	1	2 sons and 4 daughters.
Antonio Ortez,	1	
Antonio Olivares,	1	1 son and 1 daughter.
Antonio Cisernas,	1	
Nepomucene Cisernas,	1	1 son, grown.
Antonio Treviño, widower,		2 sons.
Juan Treviño,		1
Trinidad Gonzales,	1	

Citizens.	Married.	Single.
Rafael Quantanella,	1	2 daughters.
Bernardo Salveda,	1	
Four sons, men grown,		4
José Manuel Garcilazo,		1
Antonio Mayerga,	1	4 daughters.
One son grown,		1
Ramon Malina,		1
Julian Garcia,		1
Pedro Gonzales,		1
Victoriano del Castillo,	1	3 sons.
Juan Garcia,		2 daughters.
Dionesio Leredo,	1	2 sons and 2 daughters.
Luis Arzala,	1	
José Miguel Treviño,	1	3 sons.
Luis Nunez,		1
Ignacio Quintanilla,	1	
Palinario Gonzales,		1
Celilio Olivares,		1
Gregino Ortiz,		1
Juan de Dios Gonzales,		1
Juan Pablo Garza,		1
Simeon Gonzales,	1	
2 sons grown,		2
Feliciano,	1	2 sons, 1 daughter.
Juan Francisca Vela,	1	3 sons, 1 daughter.
Selfrino Leal,	1	1 son, 1 daughter.

(A copy.)

EL BARON DE BASTRAP.

In the city of San Fernando de Bexar, this 13th day of April, 1824, the provincial delegation in session assembled: Members present: citizens José Antonio Sancedo, José Ma. Lambrano, El Baron de Bastrap, and Ramon Muzquez, member secretary. Absent members, citizen Miguel Arciniego, and Juan José Hernandez, and Mariano Rodriguez.

The members in session having duly considered the petition of Martin de Leon, a resident citizen of the town of Cruillas, within the jurisdiction of the State of Tamaulipas, soliciting for himself and sundry individuals of that district, "permission to remove with their property to this province, for the purpose of settling on the banks of the river Guadalupe with the intention of founding and building up a town upon the condition that they shall be exempt for ten years from all taxes; hold in right of property the salt licks or ponds they might discover; be permitted to take wild horses free of duty, with permission to sow all kind of grain and seed of utility and benefit."

The delegation having deliberated upon the subject with due re-

flection, and having always in view the advantages resulting to this province, by the admission of settlers whose labor, industry, and establishment of the arts and manufactures they may introduce into it, have resolved to admit the petition of the said Martin de Leon under the following restriction:—

First. That the said De Leon, and his associates who may immigrate with him to the territory of this province, shall enjoy the exemption of duties as provided by the sovereign decree of the 29th of September of last year, for the term of seven years therein provided; after which he will be at liberty, the same as all other inhabitants of the province, to petition the supreme government for an extension of this or any other exemption or privilege they may wish.

Second. That as the duty of two rials per head on wild horses enough is paid into the treasury of each respective town, and as this new town will necessarily require some disposable funds, for the indispensable expenses of the authorities and other municipal purposes, it is optional with the empresario and associates either to excuse themselves altogether, or defer the payment of said duty or tax on all horses collected by them, for the purpose of increasing their stock, for breeding, or for the use of their families; provided, nevertheless, that horses collected and sent out of the provinces shall not be exempt from said duty or tax.

Third. That with the exception of tobacco, they are permitted to cultivate every species of grain and seed they please; vineyards, coffee, cocoa, flax, olive, plaintation; the mulberry for silk, hemp, and beeswax, with the understanding that these articles shall be free from excise for ten years; tithes, first-fruits, and all other taxes or duties of every denomination whatsoever, conformably with the provisions of the sovereign decree of 8th October last year.

Fourth. That the salt licks or ponds formed in that district, or its vicinity, may be used, as far as necessary, for the consumption of the inhabitants, until the government, to whom these exclusively belong, shall otherwise dispose of them.

Fifth. That should the government hereafter think proper to exact an export duty on horses taken to foreign countries, they are bound to pay it, notwithstanding the foregoing exemption.

Sixth. That all persons intending to settle in said new town, as well as those already enrolled, must be of good moral character, have some trade, profession, or, with means of support as required by the colonization law, the provisions of which must also be strictly observed in the distribution of lands and founding the town, which will be known by the name and style, as they requested, of Our Lady of Guadalupe de Jesus Victoria (Nuestra Señora de Guadalupe de Jesus Victoria).

Seventh. That whenever the said Martin de Leon and his associates shall have arrived near the place they intend to settle upon, they will notify this delegation of the same, in order that the site may be designated to them for the location of the town, and also

each individual may be put in possession of land for a house, farm, and field.

Eighth. That the said Martin de Leon will be furnished with a duly authenticated copy of the foregoing regulations, which he can retain in his possession; should he agree to the foregoing proposition, it will also serve for the basis of the files of documents which may accumulate in this matter, and the original, remaining as documentary evidence of the same, will constitute a part of their archives.

Ninth. That until the said town shall be organized, and the inhabitants possess the necessary elements to elect the judges and establish the tribunal provided by law, the authority of constitutional alcalde for that district shall be vested in the aforesaid Martin de Leon, subject, meanwhile, to the authorities of this capital, with the power in case of sickness or other accidents, to appoint a substitute in the person he may think best qualified to discharge these important duties, investing him with his power and authority as such.

Whereupon this session closed, after signing the foregoing.

JOSÉ ANTONIO SANCEDO.
JOSÉ MA. LAMBRANO.
EL BARON DE BASTRAP.

RAMON MUZQUEZ,
Member Secretary.

(A copy.)
EL BARON DE BASTRAP.

To his Excellency the Governor of the free State of Coahuila and Texas:—

Citizen Martin de Leon, a native and resident of the town of Cruillas, in the State of Tamaulipas, most respectfully represents to your Excellency, that in April of 1824, he petitioned the most excellent the delegation of Texas to grant him permission to settle on the banks of the river Guadalupe forty-one families from the State of Tamaulipas, in the manner and on the terms contained in the resolution and grant of said delegation; a copy whereof is hereunto annexed. In pursuance thereof, in the month of October of the same year, he commenced the settlement with twelve of said families, establishing the town on the north bank of said river, and about a quarter of a league from the Atascoeito road. Subsequently to that period, sixteen families of Anglo-Americans, bringing with them their property, and having joined him, have been admitted in conformity with the present colonization law. The remaining twenty-nine families have been prevented from joining him by the unusual drought, which has destroyed the pastures on the road, and subsequent excessive rains; but I have just received advices that they were lately preparing to start, and may be expected here at an early date. The town now organized, fields opened, facilities for watering stock provided, enormous disbursements made, and all in a state of active

progression, the foreigner Green De Witt, a new empresario, presented himself, stating that the lands occupied by my settlers and myself composed a part of those granted to him; attempting to exercise authority over these families; telling them that their lands are under his control—preventing thereby one individual, located at the crossing of said river Guadalupe, and who has in charge the ferry-boat, from cultivating a piece of ground he had begun to improve on the bank of the said river, by widely spreading reports of this nature. He has alarmed my settlers, and caused many who were actually engaged with great assiduity in building extensively, to suspend these operations, and thus became discouraged to such a degree that they were about to abandon their possession and improvements. It required the greatest exertion and perseverance on my part to inspire them confidence in our government, and that in its wisdom, justice and protection would be rendered to them. That the government was probably not aware that the petition of Green De Witt embraced the territory occupied by me and my settlers, as well as land appertaining to some of the inhabitants of La Bahia, and that nothing but an absence of the knowledge of this fact could have induced the government to accede to the proposition of that petition, who should not have extended his boundaries so as to encroach upon the territory occupied by me with the above mentioned families, nor ought he now to insist upon taking such a measure. By the copy aforesaid it will appear that I petitioned for a sufficient quantity of land whereon to build a town, and that whenever it should be settled with the whole, or a part of the families, I proposed the land should be designated to me by certain fixed limits and boundaries; but it so happened that by the time I had effected this the (Provincial) delegation had been dissolved and the Hon. the (State) Legislature had not yet been organized. There was at that time no other authority to which I could apply to fix my boundaries aforesaid, except the nearest Alcalde, to whom I made a requirement to that effect, as appears by his reply, hereunto annexed. Finally, when the Legislature (of the State) was organized, and I could reasonably withdraw some of my personal attention, which had been until then exclusively engaged in protecting the lives and property of the said families against the transgressions of the savage Indians, and at the time I was about to request that the boundaries of my territory might be permanently fixed, behold the New Empresario, Green De Witt, presented himself with the grant he had obtained, setting up pretensions to the very lands I already occupy as Empresario. It is understood by the families of this settlement that its boundaries are from the Anastasia ford, where the road from La Bahia to Nacogdoches crosses the River Guadalupe on a straight line north to the La Baca creek, and with these two streams La Baca and Guadalupe, eastward to the line of the ten coast border leagues, which district of the country is well known to them, and for the possession of which I now claim your favor and

protection, by virtue of the 9th article of this supreme decree of 18th, 1824, which is in these words:—

In the distribution of lands a preference shall be given to Mexican citizens, and no other distinction shall be made in regard to them, except that which may be founded on individual merit, or services rendered the country, or under equal circumstances, and a residence in the place where the lands to be distributed are situated.

Therefore I pray and entreat that in consideration of the reasons set forth in my petition, and the justice of my pretensions, your Excellency will be pleased to commission a person to establish permanently the boundaries of the land requisite for the settlement of the number of families which the population of said town will soon contain; this may be effected so as to include a part on the lands last mentioned, not yet settled by the families proposed by Green De Witt, as it will offer no impediment to the settlement of those families on them even should he be able to carry his contract into effect, as he has proposed; this appears to me to be justice, and I make oath in due form to the purity of my intention, protesting against all damages, costs, &c. Most Excellent Sir.

MARTIN DE LEON.

In the city of San Fernando de Bexar, this 13th day of April, 1824, the Provincial Delegation in session assembled: members present, citizens José Antonio Sancedo, José Ma. Lambrano, El Baron de Bastrap, and Ramon Muzquez, members' secretary: absent members, citizens Miguel Arciniega, and Juan José Hernandez, and Mariano Rodriguez, sick.

The members present in session having duly considered the petition of Martin de Leon, a resident citizen of the town of Cruillas, within the jurisdiction of the State of Tamaulipas, soliciting for himself and sundry individuals of that district permission to remove with their property to this province for the purpose of settling on the banks of the river Guadalupe, with the intention of founding and building up a town upon the condition that they be exempt for ten years from all taxes, hold in right of property the salt licks or ponds they may discover, be permitted to take wild horses free of duty, with permission to sow all kinds of grain and seeds of general benefit and utility.

The delegation having deliberated upon the subject with due reflection, and having in view the advantages resulting to this province from the admission of settlers whose labor, industry, and establishment of the arts and manufactures they may introduce, have resolved to admit the petition of the said Martin de Leon under the following restrictions:—

First. That said De Leon and his associates who immigrate with him to the territories of this province, shall enjoy the exemption of duties as provided by the sovereign decree of the 29th of September of last year, for the term of seven years, as therein described, after

which he will be at liberty, the same as all other inhabitants of the province, to petition the Supreme Government for an extension of this or any other exemption or privilege they may wish.

Second. That as the duty of two rials per head on wild horses caught is paid into the public treasury of each respective town, and as this new town will necessarily require some disposable funds for the indispensable expenses of the authorities, and other municipal services, it is optional with the empresario and his associates either to excuse themselves altogether, or defer the payment of said duty or tax for the purpose of increasing their stock for breeding, or for the use of their farms, provided, nevertheless, that horses collected and sent out of the province shall not be exempted from said tax or duty.

Third. That with the exception of tobacco, they are permitted to cultivate every species of grain and seed they please, vineyards, coffee, cocoa, flax, olive plaintation, the mulberry for silk, hemp, and beeswax, with the understanding that these articles shall be free for ten years from excise, first-fruits, tithes and all other tax or duty of every denomination whatsoever, conformably with the provisions of the sovereign decree of the 8th of October last year.

Fourth. That salt licks or ponds found in that district or its vicinity may be used, so far as necessary, for the consumption of the inhabitants until the government, to whom these exclusively belong, shall otherwise dispose of them.

Fifth. That should the government hereafter think proper to exact an export duty on horses taken to foreign countries, they are bound to pay it notwithstanding the foregoing exemption.

Sixth. That all persons intending to settle in said new town, as well as those already enrolled, be of good moral character, have some trade, profession, or visible means of support, as required by the colonization law, the provisions of which must be strictly observed in the distribution of land, and founding the town, which be known by the name and style, as they request, of Our Lady of Guadalupe de Jesus Victoria (Nuestra Señora de Guadalupe de Jesus Victoria).

Seventh. Whenever the said Martin de Leon and his associates shall arrive at the place they intend to settle upon, they will notify this delegation of the same in order that the site may be designated to them for the location of the town, and also that each individual may be put in possession of land for a house, farm, and field.

Eighth. That the said Martin de Leon will be furnished with a duly authenticated copy of the foregoing resolution, which he can retain in his possession should he agree to the foregoing proposition. It will also serve for the basis of the file of documents which may accumulate in this matter, and the original, remaining as documentary evidence of the same, will constitute a part of these archives.

Ninth. That until the said town shall be organized, and the inhabitants possess the necessary elements to elect the judges, and establish the tribunal provided by law, the authority of constitutional Alcalde for that district shall be vested in the aforesaid Martin de

Leon, subject, meanwhile, to the authorities of the capital, with the power, in case of sickness or other accident, to appoint a substitute in the person he may think best qualified to discharge those important duties investing him with his power and authority as such. Whereupon this session closed, after signing the foregoing in testimony thereof.

JOSÉ ANTONIO SANCEDO,
JOSÉ MA. LAMBRANO,
EL BARON DE BASTRAP.
RAMON MUZQUEZ,
Member Secretary.

The foregoing is a copy of the original documents spread upon the journals of this delegation, from which it was literally taken to be delivered to the parties intended, day and date above written.

JOSÉ ANTONIO SANCEDO.
RAMON MUZQUEZ,
Member Secretary.

The foregoing copy of the act, certified by the member secretary of the Ex most excellent delegation, is faithfully and legally drawn from the original act, to which I refer. In testimony thereof, I give the present certified copy, at the verbal request of citizen Martin de Leon, constitutional Alcalde of the new town of our Lady de Guadalupe de Jesus Victoria, which I execute by virtue of authority vested in me, in the presence of attendant witnesses, according to law, in the absence of a Notary Public, there being none. Done at the city of Bexar, Department of the State of Coahuila and Texas, this eighteenth day of August, eighteen hundred and twenty-five, which I attest.

JUAN MARTIN DE BERAMENDI.

Attendant witness,
MARIANO GORTARE.

Attendant witness,
VICTORIANO LEPEDO.

By your official communication, dated 26th day of February last, I am apprised of the obstacles which have heretofore prevented you from bringing in as many families as you stipulated for in your memorial to the most excellent delegation of this province, wherein you requested permission to found the new town therein mentioned. Although you have not fulfilled your engagements, yet, persuaded that you are ardently desirous to effect that object, I anxiously await the consummation of it, so that the town may increase with rapidity commensurate with the fertility of the soil, and its locality, and the industry of the people who may settle it. As soon as I receive any order or regulations relative to matters of colonization, I will communicate them to you for your government. God and Liberty. San Fernando de Bexar, March 13th, 1825.

JUAN MARTIN DE BERAMENDI.

To the Alcalde of the town of Gaudalupe Victoria:—

The foregoing copy is truly and faithfully drawn from the original official documents presented by, and now in the possession of the party intended, to which I refer. In testimony whereof, I, citizen Juan Martin de Beramendi, principal constitutional Alcalde, grant this authenticated copy at the verbal solicitation of the aforesaid party intended, citizen Martin de Leon, constitutional Alcalde of the new town of our Lady of Guadalupe de Jesus Victoria, acting under the authority, with attendant witnesses, according to law, there being no Notary Public here of any description whatsoever. Given at the city of Bexar, on the nineteenth day of August, in the year one thousand eight hundred and twenty-five, which I attest.

JUAN MARTIN DE BERAMENDI.

Attendant witness,
MARIANO GORTARI.

Attendant witness,
VICTORIANO LEPEDO.

MOST EXCELLENT SIR:—

I present to your excellency, with accompanying documents, a memorial of citizen Martin de Leon, Empresario of the new town of Guadalupe de Jesus de Victoria, situated on the opposite bank of the River Guadalupe, praying that the limits or boundaries may be permanently established as described, and considered requisite to the settlement of the Mexican families he has contracted to bring as colonists from the State of Tamaulipas. I am convinced of the justice of his pretensions, that those lands should not be included within the boundaries assigned the foreigner, Green De Witt. The advantage which must result to the nation in general and the State in particular, by colonizing her territory with Mexicans in preference to foreigners, are evident, not only by reason of the mildness of their character, but because our laws are not repugnant to them, and for these reasons, in my opinion, I consider the Empresario Martin de Leon entitled to the favor he solicits, especially as it will not operate to the prejudice of the other party, the performance of whose contract is very doubtful. Nevertheless, the usual judgment and prudence of your Excellency, if so pleased to consider, will resolve according to their dictates in the matter. God and Liberty. Bexar, August 21, 1825.

Most Excellent Sir.
JOSÉ ANTONIO SANCEDO.

To his Excellency, Don RAFAEL GONZALES,
Governor of this State.

SALTILLO, *October 6th*, 1825.

Annex the foregoing, and memorial accompanying, to the file of

documents in relation to this matter, and let the whole be received, that action may be had therein.

GONZALES.

JUAN ANTONIO PADILLA,
Secretary.

In consideration of the memorial of citizen Martin de Leon and the accompanying documents in support of the same, transmitted to me by your Lordship, with your official note of the 21st of August last, of your opinion expressed in the same, the file of documents at folio 6, Book A, No. 3, relative to the formation of a new town by the Empesario Martin de Leon on the River Guadalupe, named Guadalupe de Victoria, and of all other things in relation to the matter, and inasmuch as it is provided in the second article of the contract of Green De Witt, entered into on the 15th of April, in the present year (in which is included the boundaries of the settlement (Empresa) of the citizen Martin de Leon), that he shall respect all possessions given to settlers who occupy land under legal titles within limits of his boundaries, and as Article 47th of the colonization law of the 24th of March last provides that the families who may have settled within the limits of the State without having land legally assigned them shall subject themselves to the aforesaid law, I have resolved—

First. That the resolution of the Provincial Delegation of Texas, passed in session of the 13th of April, 1824, granting to the citizen Martin de Leon permission to found a town on the bank of the River Guadalupe with the families he proposed, under the appellation of Guadalupe de Victoria, being sufficient to authorize the said settlement to be made conformably thereto, with the families already established there, lands will be distributed and the town founded in strict conformity with the aforesaid law of the 24th of March and pursuant instruction through the agency of a commission, whom I shall appoint for the purpose.

Second. That the exemptions and privileges granted in favor of said new town or settlement by the resolutions of the aforesaid ex-delegation, shall remain in force so far as is consistent with the aforementioned colonization law and the general laws of the federal government.

Third. That the limits of the new town, as well as the possessions of each inhabitant respectively, shall be designated by the commissioner whom I shall appoint, as soon as the instructions of the Government of commissioners in the distribution of lands, which I have submitted to the Hon. Congress, may be approved by that honorable body.

Fourth. That the resolution be made known to the Empresario Green De Witt, in order that he may not in any manner whatever molest the inhabitants of the town of Guadalupe Victoria, nor interfere with the progress of their building or farming.

All of which I communicate to your Lordship for your information and the purposes herein contained. God and Liberty. Saltillo, 6th October, 1825.

GONZALES.
JUAN ANTONIO PADILLA,
Secretary.

TO THE POLITICAL CHIEF OF THE DEPARTMENT OF BEXAR.

No. 43.

MOST EXCELLENT SIR: I have received your excellency's official note communicating to me that in view of the memorial and accompanying documents presented by the Empresario citizen Martin de Leon, which I transmitted to your Excellency under date of 21st August last, wherein he petitioned for a ratification of the permission he obtained, of the Ex-Delegation of the Province of Texas, to establish a town on the bank of the River Guadalupe, under the name of Guadalupe de Victoria, and my opinion showing why he should not be molested by the Empresario Green De Witt, your Excellency has been pleased to confirm the grant made by that body, in Article 1st and 4th of your official communications of 6th ulto., which supreme resolution I have transcribed for the party interested, citizen Martin de Leon, for his satisfaction and fulfilment, and to the Empresario Green De Witt, in compliance with the orders of your excellency in said official communication, to which I hereby duly reply. God and Liberty. Bexar, October 30, 1825.

Most Excellent Sir.
JOSÉ ANTONIO SANCEDO.

To his Excellency, RAFAEL GONZALES,
Governor of the State of Coahuila and Texas.

No. 93.

MOST EXCELLENT SIR:—

Herewith I lay before your Excellency the accompanying petition of Martin de Leon, Empresario of the town of Guadalupe de Victoria, soliciting that the land described for his colony in his petition, may be designated to him.

Most Excellent Sir.
JOSÉ ANTONIO SANCEDO.

To his Excellency, IGNA. ARISPE,
Governor of the State of Coahuila and Texas.
May 27th, 1827.

MOST EXCELLENT SIR:—

Citizen Martin de Leon, Empresario of the colony of Guadalupe de Jesus Victoria, in the State of Coahuila and Texas, with due re-

spect represents to your Excellency, that ever since the year 1824, he has been located at the place granted to him by the Most Excellent Provincial Delegation of Bexar, and has endeavored by every means in his power, by great labor and pecuniary sacrifices to promote the advancement and prosperity of the settlement, and complete the establishment of the forty-one families which he proposed at that time; but as the citizen Green De Witt, Empresario of the adjoining colony bearing his name, had interposed a claim to the land appertaining to this colony, from which he desisted during the last year, 1826, in consequence of article 2d of your Excellency's order of the 6th October, declaring that the said De Witt should not incommode your petition in the free settlement of his colony, and fulfilment of his contract, and also that your Excellency would appoint a commissioner to regulate the distribution of land to the colonists: Now, although the aforesaid Green De Witt has said nothing further to your petition on the subject since he has been notified of your Excellency's above mentioned supreme order, nevertheless your petitioner is anxious, in order to obviate similar difficulties in future, which tend very considerably to retard the progress and prosperity of the colony under his charge, that your Excellency should appoint a commissioner as soon as possible, to come and legally designate the respective boundaries, which should be according to the representation of your petition of last year, from the point at which the boundary line of the ten coast leagues crosses the river La Baca del Esperitu Santo Nacogdoches, thence in a straight line south with the said road to the River Guadalupe, at the place known as Anastasia ford, thence with the left bank of said river to the farm (rancho) San Francisco, which although perhaps within the limits of the ten coast border leagues, your petitioner thinks he may be permitted to remain within his boundaries, as he settled it previous to the publication of the General Colonization Law, and because he has his stock of cattle and horses on it, and accustomed to the place; and thence in a straight line to the River La Baca, at the place of beginning, permitting him to designate by landmarks said four points of his boundaries, and requiring the said commissioner to notify the citizen, Green De Witt, of the establishment of the same, for his information and due observance. Therefore, I humbly pray your Excellency to grant, in justice, the prayer of this my petition. I make oath that it is without malice, in due form, &c.

Town of Guadalupe de Jesus Victoria, May 18th, 1827.

MARTIN DE LEON.

Desirous to dispose of the petition of citizen Martin de Leon, presented to me by your lordship with your official note No. 92, of 27th ult'o, I wish you to name some person of your city or department adapted to perform the duties of commissioner, in order that his appointment may be made, and that I may proceed to give the

colonists possession of their lands, and found the town with the requisite formalities. God and Liberty.

VICTOR BLANCES.

JUAN ANTO. PADILLA,
Sect'y.

To the Political Chief of the Department of Texas.
Saltillo, 15th June, 1827.

No. 153.

MOST EXCELLENT SIR:—

In consequence of the supreme order of your Excellency under date of 15th of June last, requesting me to propose a citizen of this Department for Commissioner of the Colony of the Empresario, citizen Martin de Leon, I am induced to represent to your Excellency that the party intended merely petitioned that the executive would cause the boundaries to be designated of the land which may be occupied by his colony, with the view to prevent difficulties which might otherwise occur with the Empresarios of the adjoining colonies, and as it appears that at the date of his petition he did not calculate upon having a sufficient number of families to authorize him to ask for a commissioner to put them in possession, he omitted to make the request. But notwithstanding this, and taking into consideration that the citizens of this department capable of discharging the duty are at present occupied attending to their own private affairs, and would not therefore voluntarily accept the appointment, I am induced to avail myself of this opportunity to offer my own services to effect it, which I can do without in any manner neglecting the duties of the station I now occupy. God and liberty.

Most Excellent sir.

JOSÉ ANTONIO SANCEDO.

To his Excellency the Governor of the State of Coahuila and Texas.
Bexar, July 8th, 1827.

A copy.

(Signed) SANTIAGO DEL VALLE,
Secretary.

In the city of Leona Vicario, this thirteenth day of April, in the year one thousand eight hundred and twenty-nine, the citizen Rafael A. Manchola having presented himself with the foregoing power of attorney and instructions (the originals of which are annexed to this file of documents), for the purpose of contracting with the government in the name of citizen De Leon for an augmentation of land in the manner and on the terms he solicits in his memorial of the 22d of last month, which augmentation the government has agreed to, in

consideration of his offer to introduce one hundred and fifty families, the most of them to be Mexicans, in addition to those already contracted for on the 13th April, 1824, with which understanding the following conditions were agreed upon:—

First. The survey of the land, which in addition to that already granted on the date above mentioned, to be augmented by the present agreement shall be as follows: Beginning at La Baca Creek, near the place where it is crossed by the middle road leading from La Bahia to Nacogdoches, and thence run one league with the said creek upward, thence a line shall be run parallel with said road to cross the river Guadalupe at the "Lego" ford until it strikes Coleto Creek, and thence with this creek downwards, the survey terminating at its junction with the aforesaid River Guadalupe.

Second. The Empresario, citizen Martin de Leon, receives the land above described and designated as an augmentation to his colony, and, therefore, in its adjudication is subject to the requirements and provisions of the colonization law of 24th March, 1825, and the time allowed for the settlement of the one hundred and fifty families he now offers, is that prescribed by said law, commencing on the day of the date of the above written agreement.

And his Excellency the Governor, and the said attorney of the citizen Martin de Leon, having agreed to the stipulation of this contract, they and each of them mutually obligate themselves to the faithful and punctual performance of the same, before me, the Secretary of State, which they sign in testimony thereof. And as the file of original documents remains in this office, certified copies of it were by order given to the party interested, in order that with it he may apply to the Commissioner-General which this Government has appointed, who will put him in possession and issue the corresponding legal instruments.

JOSÉ MA. VIESCA,
RAFAEL A. MONCHOLA.

SANTIAGO DEL VALLE,
Secretary.

The foregoing is a copy of the original on file in this office under my charge, from which it was drawn by order of his Excellency the Governor.

Leona Vicario, May 12th, 1830.

(Signed) SANTIAGO DEL VALLE,
Secretary.

I have this day communicated to citizen Antonio Navarro, Commissioner for the distribution of land in the colony of Green De Witt, as follows: Your official communication of the 16th of April last is received, and the Executive informed of its contents in relation to

the circumstances that the contract of citizen Martin de Leon granted to him part of the land belonging to Green De Witt, and he has to say to you, that when the augmentation of lands was granted to Rafael A. Monchola, as attorney for the said Leon, at his petition, it was understood that he applied for such as was vacant, but as it appears that they belong to the area designated to Green De Witt, the grant made to Monchola on the 30th April, 1829, can be of no effect.

In order that in future you may be able to act in similar cases which may hereafter occur, without necessity of applying to the Executive, I have thought proper to reiterate the order I have already issued on this subject, which is, that whenever the same land may have been granted to two or more persons, possession must be given to the first grantee, for as the Executive has not a general idea of the localities, nor a correct map, some errors of this nature may have occurred, and may still occur. The subsequent grantees cannot sustain what they could not legally acquire. Which I transcribe for the information of your honor; and in order that, in cases of a similar nature which may occur in this department, your honor may act in strict conformity with the tenor of the foregoing communication. God and liberty.

Leona Vicario, May 2, 1831.

(Signed) LETONA.

To the Political Chief of the Department of Bexar, SANTIAGO DEL VALLE.

Circulated to the Alcaldes and Commissioners for the distribution of land in this department on 14th June.

THE HONORABLE THE PERMANENT COMMITTEE:—

The undersigned has with due deliberation examined the memorial and accompanying documents, addressed to the Executive by the municipal authorities, Ayuntamiento of the town of Goliad, bearing date the third of June last, and although it appears throughout that the Provincial Delegation granted permission to citizen Martin de Leon to establish a small town on the land situated between La Baca Creek and the River Nueces, it is also apparent that it was not commenced until after the publication of the colonization law; it should have been done in strict accordance with the provisions of that law, for without it, and the indispensable and necessary approval of the Executive was never obtained, that undertaking cannot nor ought it to be considered legal, nor should it in any manner whatever affect the right of the Empresarios Power and Hewetson, whose contract is replete with every requisite and requirement of the laws.

If, for the reasons already set forth, the undertaking of Martin de Leon ought not to be considered legal, much less is it made to appear by the idea of the Political Chief pretending to legalize it by the appointment of Fernando de Leon to establish the boundaries of

this colony, for this proves as this appointment belongs exclusively to the Executive. Finally, the nullity of the undertaking of Martin de Leon is made more apparent in the memorial referred to by the Ayuntamiento claiming it should be located within the limits of the Coast Border Leagues, a section of territory subject to the exclusive control of the General Government, and which has in fact been ceded by it in favor of the Empresarios Power and Hewetson, who made their contract with the General Government and not with the government of the State, inasmuch as it had no authority to that effect.

This last observation is sufficient, in the opinion of the undersigned, to set aside the principles which the Ayuntamiento of the town of Goliad would establish, as well as the report of the Chief of the Political Department, made with a view to legalize the settlement which it recommends. The Political Chief of the department, at the commencement of his report, requests that no impediments may be created to prevent citizen Martin de Leon from legally settling the families of his contract within the limits of the Coast Border Leagues, which are to be settled by Hewetson. Hence it appears that in his opinion De Leon's settlement is not legally located, nor on lands disposable by the State, as is the fact with regard to the Coast Border Leagues, and in this case that petition would seem to say, or infer, that the authorities of the State assume powers expressly vested in the General Government. These observations, with many others elicited by the aforesaid report and memorial (one of which is that to accede to the petition of the Ayuntamiento of Goliad, it would be necessary to disregard the decree No. 177, and that the town property of the extinguished Mission of Refugio should be disposed of in some other manner than that provided by law), has determined the undersigned to offer to the hon. Committee the following resolution: That the memorial of the Ayuntamiento of Goliad not being acceded to by this committee, that body will remain subject to the resolution of the executive of the State, dated 25th May of the present year, and to the other resolution passed in relation to the colonial undertaking of the citizen, James Power and James Hewetson.

AGUIRRE.

Leona Vicario, July 23, 1831.

LEONA VICARIO, *July* 30, 1831.

Having this day received further official communication from the political chief of the department of Bexar, accompanied by files of documents relative to the same subject of which the preceding opinions treat, the resolution of the Executive upon this matter is suspended until the said Permanent Committee give their opinion upon the documents recently received, the originals of which will be laid before them for that purpose.

LETONA.

SANTIAGO DEL VALLE,
Secretary.

TO THE HONORABLE THE PERMANENT COMMITTEE:—

The new petition of the Ayuntamiento of the town of Goliad, together with that of citizen Martin de Leon, both of them soliciting that the colonization contract which has been granted by the government of the State, with previous approbation of the General Government, to the Empresario James Power, and James Hewetson, to settle the vacant lands of the Coast Border leagues, between the La Baca Creek and the River Nueces, should be declared void, and that these lands thereby remain to be distributed to the inhabitants of Goliad, or for the benefit of the Empresario Martin de Leon, agreeably to his pretension, already sustained by the Ayuntamiento of the town, are, according to the judgment of the undersigned, destitute of all foundation, and neither law, reason, or that decorum which should be observed by the Executive, can justify the annulment of the contract made with the aforesaid Power and Hewetson, merely to justify the wishes of those inhabitants, when that contract up to the present time is not vitiated by any defect whatsoever. The circumstances of the land being vacant, as appears to be the case by the aforesaid contracts, but upon which the petition now raises doubts, they themselves have maintained to be the fact in their previous petition. Were this not the case, neither the citizen Martin de Leon, the Ayuntamiento of Goliad, nor the inhabitants of that place, would have failed to have alleged their rights of property, or to have cleared up the doubt as to the condition of the land which they are contending for. The consent of the General Government, which by law was made indispensably necessary, to settle the lands of the Coast Border leagues, has been obtained only by the Empresario Power and Hewetson, and by no other persons whomsoever, which, as has already been stated, on other occasions, is sufficient not only to show that the pretensions of the citizen Martin de Leon and the inhabitants of Goliad cannot obstruct the consummation of their contract; but even if they are, were admitted, the want of the requisites would render every colonization contract illegal. In the file of documents which the political chief of Texas has transmitted in support of the petition, upon which this opinion is made, it is found that the contract made in April of the year '29 with Mr. Rafael Monchola, as attorney of the aforesaid Leon, is declared null as regards that part of it including lands previously granted to the Empresario Green De Witt, in conformity to the general provision of the government relative to contracts wherein it is prescribed, that when, through mistake or otherwise, lands are designated which are already granted to other empresarios, they shall be declared invalid. And it being notoriously evident that in this said contract of Mr. Rafael Monchola, the lands therein designated not granted to Green De Witt, are part of these belonging to the contract of Power and Hewetson, for these very reasons it ought to be declared void as regards them, cannot merit their approval; and though the petition signed by sundry inhabitants of Goliad and transmitted by its illus-

trious "Ayuntamiento," is calculated to awaken various reflections which might throw light on the right they pretend to have in opposition to the colonization of the lands to which they refer, that petition is deemed unworthy of consideration, in consequence of the indecorous manner and terms in which it is couched, manifestly insulting the majesty of the government, and showing an utter disregard for that respect and consideration with which the highest authority of the State should be approached. The undersigned, therefore, unwilling to create reflections foreign to the subject under consideration, by occupying the committee by observations on the idea urged by the said memorial, considering them unworthy of attention, submits to its consideration the following resolution: That notwithstanding the representation set forth in the documents, made with a view to render invalid the contract of James Power and James Hewetson, and referred to the committee by the Executive, the committee confirm the opinion they have already formed and reported to the Executive on this subject.

Leona Vicario, August 13th, 1831.

AGUIRRE.

LEONA VICARIO, *August 18th*, 1831.

The executive having approved the foregoing reports of the Honorable Permanent Committee convened as counsel, it will therefore be duly executed as therein expressed, together with the former report to which it refers, communicating the same to the parties interested for their due observance.

LETONA.

SANTIAGO DEL VALLE,
Secretary.

A copy of the original on file in the Secretary's office, from which it was drawn by order of his Excel'cy the Governor. Leona Vicario, August 19, 1831.

(Signed) SANTIAGO DEL VALLE,
Secretary.

Head Quarters of the Commander-in-Chief and Inspector-General of the Eastern Interior States.

The Illustrious Ayuntamiento of the town of Goliad, and citizen Martin de Leon, Empresario of the Mexican colony of Guadalupe, made a remonstrance to me against the great injury their interests are sustaining by the settlement of the colony contracted for by citizen James Power, and by the documents they have presented I find that the decision of this question appertains to the Supreme Government of the Nation, inasmuch as it involves the coast border leagues and grants which have been made by that supreme authority, so that as it appears that two exist, one in favor of Powers, and the

other with the said Leon, the preference can only be decided by the said Supreme Government. It also appears by documents laid before me by Powers that the grant for the augmentation to his colony of the lands of the Mission of Refugio, and of the town property of the same, which was sold to him on the 25th of May of last year, is deficient by not having the approval of the Supreme Federal Government, which is requisite, as the lands are within the coast border leagues, and are not comprehended in the first contract for said individual, for when that contract was made the mission was still extant, and the land belonging to it could not be granted to any person. For all these reasons I trust your Honor will be pleased to prevent the said Power from taking possession of the land he claims between the mouth of the La Baca to Aranzazie creeks. But as there is no objections to be made to his contracts as regards the other lands it calls for, he may be given possession of those situated between the right bank of Aranzazie creek, and the left bank of the River Nueces or Corpus Christi, provided that the settlers who are to occupy them duly accredit themselves to be Irish and not natives of the neighboring nation, who are excluded by the law of the 6th of April of last year. The present occasion affords me the opportunity of reiterating to your honor the assurances of my highest consideration. God and Liberty. Matamoras, October 22, 1831.

MANUEL MEIR & TERAN.

To the Political Chief of the Department of Texas.

Office of the Political Chief of the Department of Bexar.

His Excellency, the Governor of the State, having directed in his supreme order of the 10th of March, the execution of the resolution of the Supreme General Government relative to the preference to be given to the colonists of the contract of the citizens Martin de Leon with regard to the possession of land to which they are entitled, it becomes indispensably necessary that you should present yourselves to this department either in person or by attorney, in order to exhibit your documents by which to designate the boundaries of your colony and that of citizen Martin de Leon, with the understanding that should you not appear within the term of sixty days from this date, the commissioner of that colony will proceed to run off the respective boundaries according to the orders which the executive of the State has given in relation to this matter. God and Liberty. Bexar, 1st May, 1832.

(Signed,) RAMON MUZQUEZ.

To the Empresarios,
JAMES POWER and
JAMES HEWETSON.

Executive Department for the State of Coahuila and Texas.

For the purpose of distributing and giving possession of land to the empresario colonists, and purchasers who have contracted with the government, I have under this date commissioned the citizen Juan Antonio Padilla, who is authorized to put such persons in possession, and as one of such the citizen Martin de Leon. This I communicate to your Honor for his information, and in reply to your official letter of the 27th May, 1827, with which was transmitted to me the petition of the before mentioned De Leon, dated 28th said month and year. God and Liberty. Leona Vicario, 4th Dec'r, 1828.

(Signed) VIESCA.

To the Political Chief of the Department of Bexar.

(Signed) SANTIAGO DEL VALLE,
Secretary.

(Note.) Communicated on the 8th January, 1829.

No. 1.

Under date of the 20th April, 1831.

His Excellency, the Governor of the State, communicates to me as follows: In view of the foregoing representations, and in conformity with the provisions of the act of the Hon. the Legislature, dated the 5th of April last past, I have thought proper to commission the citizen Fernando de Leon, in order that agreeably to the instructions issued for this class of officers, by the same Hon. Legislature, under date of 24th of February, 1827, he may proceed to distribute the lands yet pending, and to which the families whom the memorialist states he has to introduce into that section of the country agreeably to his contracts, may be entitled to, which documents will be delivered to the party interested for his information. Transmit to the commissioner this memorial thus decreed for its fulfilment, together with the instructions herein referred to, with the understanding that the Political Chief of that department must be previously notified that his commission has been issued for his information, and in order that he may comply with the provisions in Art. 7 of decree 128, issued by the Hon. the Legislature of the State, on 7th April, 1830, a copy of which is also transmitted.

LETONA.

SANTIAGO DEL VALLE,
Secretary.

Of which I notify your Honor for your orders to me according to my instructions. God and Liberty.

(Signed) FERNANDEZ DE LEON.

Guadalupe, 4th June, 1831.

GENERAL LAND-OFFICE,
State of Texas.

I, E. Sterling C. Robertson, translator and recorder of Spanish deeds in the General Land-office of said State, bounded and sworn, certify the foregoing to be a correct translation of the original documents on file in this office. Given under my hand at the city of Austin, on the 23d day of February, A. D. 1850.

E. STERLING C. ROBERTSON.

GENERAL LAND-OFFICE,
State of Texas.

I, George W. Smith, commissioner of the General Land-office of said State, certify that E. Sterling C. Robertson, whose name is signed above, is the translator and recorder of Spanish deeds in this office bounded and sworn.

In testimony whereof I have hereunto set my hand and caused the seal of said office to be affixed at the city of Austin, on the 23d day of February, A. D. 1850.

[SEAL.] GEO. W. SMYTH,
Commissioner.

And also produced and read in evidence to the jury a translated copy of the original documents on file in the General Land-office of the State of Texas relating to the first colony contracts of Power and Hewetson, which are as follows:—

Documents relating to Colony of Power and Hewetson.

Petition for the Grant.

MOST EXCELLENT SIR:—

Mr. James Hewetson, a Mexican citizen by law, and an inhabitant of Monclova, now residing in this capital, for himself and in the name of Mr. James Power, a foreigner and native of Ireland, most respectfully showeth to your Excellency, that having ascertained that the border leagues upon the Gulf of Mexico are vacant from the mouth of the river Nueces to that of La Baca Creek, and from the mouth of the river Trinity on the Bay of Galveston to the Sabine; and being desirous of settling thereon by colonization, with families of this country and foreigners, natives of Ireland, I pray that your Excellency may be pleased to admit my aforesaid project, upon the following basis and conditions. The limits herein designated for the colony applied for, comprehended within the ten coast border leagues, will run up forty leagues on a line parallel with the river Sabine, from the coast of the Gulf of Mexico. Said lands shall be settled within the time that may be presented, with four

hundred families of good moral habits, out of the Apostolic Roman Catholic religion, of which one hundred shall be Mexicans, and the remainder natives of Ireland, for whose conveyance from Europe a good vessel shall be furnished by the company. We also offer to leave to the supreme government of the Mexican nation, all those places which may be adapted for the constructions of dockyards, fortifications and other public works, conducive to the security and defence of the Territory, which may be chosen by the scientific officers appointed by the said government for this purpose, and in all other matters, I will subject myself, and the new colony to the constitution and laws of the State, and to all other conditions and regulations of the colonization laws. Therefore I pray your Excellency may be pleased to admit this project, and grant to me the favor which I solicit, wherein I shall receive favor.

Saltillo, 29th September, 1826.

(Signed) JAMES HEWETSON.

A copy, Saltillo, 2d October, 1826.

(Signed) JUAN ANTONIO PADILLA,
Secretary.

No. 102.

MOST EXCELLENT SIR:—

I lay before your Excellency the original memorial presented by citizen James Hewetson, an inhabitant of Monclova, associated with Mr. James Power, a native of Ireland, in which they solicit permission to colonize with four hundred families, Mexicans and natives of Ireland, on the lands of the ten coast border leagues, on the Gulf of Mexico, extending from the mouth of the River Nueces to that of La Baca Creek, leaving a vacancy on the coast opposite to the colony of Austin, commences again at Galveston Bay, and reaches to the mouth of the River Sabine. Thence up its coast forty leagues in a line, within which are the border leagues adjoining the United States of the North. Before making any report to your Excellency in relation to this project, I must call to your attention that a great portion of the land solicited by petitioners are also applied for by other empresarios for the same object. In letter No. 37, dated 22d May last, the government transmitted to the department in your Excellency's charge, a petition of Benjamin Drake Lovell, who, as empresario, has already made a contract with this State, and who solicited that the limits of his colony may be extended so as to include the ten coast border league, opposite to his colony from the mouth of the River Nueces eastwardly a little more than a distance of ten leagues. The Supreme Government, in consequence of this proposition of Lovell's, directed that State by order of June 6th following, to amplify that report, but it has been impossible to execute this order, as the party has not yet returned from

North America. The coast border leagues from Galveston Bay to the mouth of the River Sabine, and the frontier border leagues on the same river, which the citizen Hewetson offers to colonize, are previously applied for by the citizen Peter Elias Bean, a colonel in the Mexican Army, which memorial I have returned to your Excellency with a favorable report, in my letter No. 93 of 18th September last past. In consequence of which, and confining myself to the memorial of the present empresario, no objection presents itself to this government to permit the colonization of the vacant lands within the ten coast border leagues, between the mouth of the Guadalupe where it empties into the sea, to La Baca Creek, which in the territory exempted by the colonizatiou law of 18th August, 1824, in the manner and in the terms therein expressed, provided it should be the pleasure of his Excellency the President to approve the project aforesaid. God and Liberty.

Saltillo, October 20, 1826.

(Signed) VICTOR BLANCO.

To His Excellency the Secretary of State for Home and Foreign Affairs.

MOST EXCELLENT SIR:—

Having laid this process before his Excellency the President, with the memorial of citizen James Hewetson, and his partner, Power, which I herewith hand to your Excellency with the note 102, of 2d October, 1826, relative to permitting him to colonize four hundred families, Mexicans and natives of Ireland, within the border leagues upon the coast of the Gulf of Mexico, from the mouth of the River Nueces to that of the Lavaca Creek, he has in conformity with the expose of your Excellency, been pleased to approve of the grant of the vacant lands solicited, which are not comprised in those granted to Col. Peter Elias Bean, nor within the limits of those of the State of Tamaulipas, with the condition that the party interested will subject the colony in all things to the general law in the case of 18th August, 1824, which I communicate to your Excellency by supreme order for the corresponding purposes. God and Liberty.

Mexico, 22d April, 1828.

CANEDO.

To His Excellency the Governor of the State of Coahuila and Texas.

In the town of Saltillo, capital of the State of Coahuila and Texas, on the tenth day of the month of December, of the year one thousand eight hundred and twenty-seven, before me, citizen Ignacio Sanchez Navarro, 1st Constitutional Alcalde and Primary Judge of this town and district, ex-officio Notary Public, with the instrumental witnesses hereinafter named, personally appeared

Mr. James Power, a native of Ireland, and an actual resident of this capital, and said that by these présents and every due form permitted by law, proclaims that he gives and grants his general power of attorney, ample and sufficient, as full, as requisite or necessary, as much as it can or ought to be, to citizen Manuel Musquez, inhabitant of this town, that he may in the name of him who declares, and representing him in his proper person, his rights and interest, whenever the memorial which he has made in company with Mr. James Hewetson, shall be returned from Mexico. The prayer of the petitioner, which is to colonize four hundred Mexican and Irish families, empowering his said attorney to execute the articles of agreement with the government of the State, and the manner and terms by which the colonization is to be effected; for which purpose he can present petitions, and give bonds and other papers and all other important documents necessary to obtain the object for which this general power of attorney is conferred, and shall not fail in power to do all matters and things in the premises, for want of any clause, expression or condition not herein inserted, executing and performing all agencies, duties and contracts, the same as though he that declares could do, were he personally present. Giving him full and ample power and authority to sue, make oath, appoint substitutes, revoke them, and appoint others anew, exonerate all of them in due form. Binding himself to ratify and confirm, all which by virtue of this power of attorney may be done or executed. For the faithful performance of which he obligates himself, his person and property, present and future, and holds himself amenable to the hon. judges and tribunals, who have or may have jurisdiction therein, and more especially to those of this republic, that they may coerce him to the fulfilment of the same by the strictest rigor of law, in the manner provided in cases of judgment, had and obtained or confessed, before competent authority without the right of appeal. This being of his own free will, he renounces all laws which might favor him to the contrary with the general law, and due form subscribed in presence of the witnesses, Eurelieo Saliz, Marcelo de Cuella, Francisco de la Fuente, present, and resident within this town.

Attest: IGNACIO SANCHEZ NAVARRO,
JAMES POWER.

Witnesses,
JOSÉ NAVARRO ORTIZ,
JOSÉ GUADALUPE SALIZ.

The foregoing copy agrees with the original from which it was taken, this day and date on which it was executed, and is written on two leaves of paper of the second stamp, according to law, of all of which of this, I the first Alcalde who hereunto subscribes, acting in accordance with the provisions of the law.

Attest: Signed, IGNACIO SANCHEZ NAVARRO.

Witness (signed),
JOSÉ NIGARIO ORTIZ.

Witness (signed),
JOSÉ GUADELUPE SALIZ.

In the city of Leona Vicario, on the 28th day of the month of May, in the year one thousand eight hundred and twenty-eight, before me, citizen Ignacio Sandefas Ferrer, 3d Constitutional Alcalde, and primary Judge of this capital and its district, personally appeared citizen Manuel Musquez, to me personally known, who saith that he substitutes the present power of attorney in and to citizen Victor Blanco, with all the powers conferred to him. In testimony whereof he signed this with me and my assistant witnesses, with whom I am by law authorized to perform those notarial acts for want of a notary public, which I attest.

Signed, IGNACIO LEUDEJAS.
MANUEL MUSQUEZ.

Witness:
NIGARIO ORTIZ.
Witness:
MARIANA GOMEZ DE ARNAIS.
Fees Twelve Rials. ORTIZ.

City of Leona Vicario, the eleventh day of the month of June, of the year one thousand eight hundred and twenty-eight. The citizen Victor Blanco, having presented himself with the foregoing power of attorney, the original of which is hereunto annexed, to contract with the government in the name of his principal, the conditions and manner upon which the colony which he solicits may be established, a contract was entered into, upon the term and stipulations expressed in the following articles:—

Art. 1st. Taking for granted the approval of the general government for the establishment of this enterprise, as appears by a resolution passed 22d April, last past, this government admits the project offered by Mr. James Hewetson and Mr. James Power, so far as it is in accordance with the colonization law of 24th March, 1825, and hereby designate the territory within which they are to colonize by the following boundaries: Beginning on the left bank of the river Guadalupe, at the angular point where it empties into the sea, thence following the line of the sea-coast eastwardly to the Lavaca Creek; thence with the right bank of this creek, the precise distance of ten leagues; thence a line shall be run westward parallel with the coast, on a border of ten leagues, until it meets the River Guadalupe, and thence downwards, on the left bank of this river, to the place of beginning.

Art. 2d. The empresarios are bound to introduce at their own expense into the territory, and settle upon the land above described, two hundred families, in lieu of the four hundred they have offered, and it is an express condition that one-half of this colony shall be composed of Mexican families, and the other half foreigners from Ireland.

Art. 3d. All possessions with legal titles which may be found

within the limits designated in Art. 1st, shall be respected by the colonists of the contract, and it is obligatory in the empresarios to see this duly executed and fulfilled.

Art. 4th. It is an express condition that where any lands may by their locality and other circumstances be useful or advantageous for the constructions of forts, wharfs, or warehouses, for the defence of the port, or other public purposes, the empresarios shall have no right to prevent the occupation of any such desirable point, which may be adapted to public use, either as above mentioned or not herein expressed.

Art. 5th. In conformity with the law of 24th March, 1825, the empresarios are bound to introduce and establish the two hundred families spoken of in Art. 2d, within the term of six years from this date, under the penalty of forfeiting the rights and privileges granted to them by said law.

Art. 6th. The families, beside being Catholics as required by law, must be of good moral habits, accrediting the same by certificates from the authorities of the place from whence they emigrate.

Art. 7th. It is obligatory on the empresarios neither to introduce or permit in their colony, criminals, vagrants, or men of bad character. They will cause all such as may be found under any of these circumstances to leave their district, and in case of resistance to eject them by force of arms.

Art. 8th. For this purpose, and whenever there may be a sufficient number of men, the national local militia shall be formed, in strict conformity to the regulations required by law.

Art. 9th. Whenever the hundred families at least may have been introduced, the empresarios will notify the governor of the fact, in order that a commissioner may be sent to the colonists, to give them possession of their lands, and to establish the towns according to law, and to the instructions which will be given him.

Art. 10th. The individual applications of the colonists for land, and the premium lands granted to the empresarios being completed, those lands remaining can only be disposed of by the government as provided by law.

Art. 11th. The official communications with the government, and with the State authorities, and all public acts and instruments of writing, must be written in the Spanish language.

Art. 12th. In all matters not expressed in the foregoing articles of contract, the empresarios and the new colony shall be subject to the constitution and laws of the general government, and to the constitution and laws of the State.

And his Excellency the Governor and the attorney for and in the name of the empresarios, having mutually agreed to all and such one of the articles of this present contract, they reciprocally bound themselves to the perpetual fulfilment of the same. In testimony thereof, and the original documents remaining in the archives of

this office, a certified copy of all of them was ordered to be given to the parties interested for their security.

JOSE MARIA VIESCA.
VICTOR BLANCO.

Leona Vicario, 11th June, 1828.

JUAN ANTONIO PADILLA.
Secretary of State of the State of Coahuila and Texas.

I certify that the foregoing copy is authentically and faithfully taken from the original file of documents in the archives of the Secretary's office, under my charge, to which I refer.

Leona Vicario, 12th June, 1828.

(Signed) JUAN ANTONIO PADILLA,
Sect'y.

I, citizen Manuel Ortiz de la Terre, Under Secretary of State for home and foreign affairs, certify that the signature of the Secretary of State, of the State of Coahuila and Texas, and by whom the foregoing documents are authenticated, is legitimate, and the same which he uses in official correspondence.

Mexico, September 5th, 1828.

(Signed) MANUEL ORTIZ DE LA TERRE. [L. S.]

I certify that the above is the signature of Don Manuel Ortiz de la Terre, Under Secretary of State for the home and foreign departments of this government.

Mexico, 6th September, 1828.

(Signed) R. PACKENHAM. [L. S.]
H. B. M.'s Chargé d'Affaires to the United States of Mexico.

Testimony of S. M. Williams.

Defendants also called Samuel M. Williams, who being duly sworn, deposed and testified, that he had not been in the region of De Leon's colony since 1826. There was no Rancho San Francisco there at the time, that he recollects of. The general government gave the right of colonizing the coast leagues to Power and Hewetson, Stephen F. Austin and Bennett. Martin de Leon, in witness' opinion, never had the right to colonize between the Guadalupe and Lavaca Rivers within the coast leagues, though such right was exercised. The lower boundary of Martin de Leon's colony was ten leagues from the coast. There was no authority in General Teran to

change the colony contracts; witness knows that Teran was ordered by the Government not to interfere or meddle with the officers of Texas in any manner in relation to lands and colonies, or their duties concerning the same. Witness saw the order from the Governor of Coahuila and Texas to Teran.

Defendants also called Joseph F. Smith, who, being duly sworn, deposed and testified as follows:—

Testimony of J. F. Smith.

That he has lived in Texas since 1836. He knows the place or farm called the Rancho San Francisco, and having examined the map made and testified to by Henry Beaumont, says the rancho is correctly located on the map. The rancho is on the lower line of De Leon's colony. The calletto Guadalupe and La Baca rivers are correctly laid down on the map. Indianola is within the literal leagues, and below the mouth of the La Baca River. I assisted Willard Richardson, surveyor of Refugio County, in running out the lines of Power & Hewetson's colony; in making the boundary line of Refugio County, we crossed the line of the Four Leagues, belonging to the town tract of Victoria. We did not pass the Guadalupe River. Power did not issue any titles to land east of the Guadalupe River, within my knowledge. From general notoriety, Power claimed the lands within the literal leagues, between the Guadalupe and La Baca rivers, as within his colony, and it was equally notorious that De Leon claimed it as in his colony, and made grants upon it; and it was equally notorious that the right of De Leon to do so was disputed. It was also notorious that the grants made in the literal leagues were made after the death of Martin de Leon.

Defendants also called Willard Richardson, who, being duly sworn, testified:—

Testimony of Willard Richardson.

That he was surveyor of Refugio County, and in 1839–40, and perhaps 1841, ran the upper boundary line of Power's colony, under instructions from the Commissioner of the General Land-office of the State, who sent me a copy of Power's colony contract, for the purpose of surveying and defining the county lines of Refugio County. In ascertaining the upper boundary line of Power's colony, I commenced at the mouth of the Nueces River, and ran the line of the coast to the mouth of the Guadalupe River, which I was instructed by the Commissioner of the Land-office not to cross, and having platted said line on paper, showing the meanders of the coast line, according to my survey, I then drew a line from the mouth of the Nueces to the mouth of the Guadalupe as a base line, and from that part of the line where the land and water would approximate nearest

together, I ran a perpendicular line ten leagues interior, and then ran a line parallel with the base line as the limit of the coast leagues. The contract of Power sent to me by the Commissioner, only embraced the coast leagues between the Nueces and Guadalupe rivers. From the calls in De Leon colony contracts were read to me. Indianola is not embraced in De Leon colony. Victoria County extended to the coast. My object was to make the county of Refugio extend ten leagues interior from the coast. Some portion of the survey is beyond, and some short of the ten leagues, but the interior line is just ten leagues from the mouths of the Nueces and Guadalupe rivers. If the coast leagues had been run from the mouth of the Nueces to the mouth of the La Baca, the line would have been different. If the contract had called for the mouths of the La Baca and Guadalupe rivers, the line to be run by such survey would have brought Indianola within the coast leagues. The territory east of the Guadalupe River, in Victoria County, was generally called in De Leon's colony.

Defendants also called Latham, a competent witness, who being duly sworn, testified:—

Testimony of Latham.

That he has known Leonardo Manso for eight years past. He has lived in Matamoras, in Mexico, during that time, and held the office of Prefect. Manso told witness he had lived in Texas. He is a Spaniard by birth.

Defendants then offered in evidence to the jury a portion of the direct and cross-examination of José M. J. Carvajal, as follows:—

Deposition of José M. J. Carvajal.

I was well acquainted with Leonardo Manso. He was one of the colonists in De Leon's colony, and was settled there when I first went to that colony, and had a rancho, and a large amount of stock in the colony. He was a native of Spain, but immigrated to Mexico when very young. He became an officer in the Spanish army, in Mexico, and joined the cause of independence in 1821, and became by that act a citizen of the American Republic. Was afterwards an officer in the Mexican army for some years; retired from service, and was appointed by the General Government an officer in the custom-house at Matamoras, and came thence to De Leon's colony.

Cross-examination.

Leonardo Manso went, in 1834, to Opelousas, and returned to Matamoras in 1837. He took some eleven or twelve boys to school in Opelousas, and took also a large number of mules, horses, and mares, belonging to their parents and to himself, for the purpose of

paying for their education. He left in De Leon's colony a large amount of stock, servants, and an agent to attend to his business. I do not recollect when he returned to Texas, but have seen him since then on the Rio Grande in Texas. He never returned to De Leon's colony to reside. But on further consideration I recollect seeing him in Victoria, in 1835, I think about June.

Defendants also offered and read in evidence to the jury the deposition of H. Clay Davis, which is as follows :—

Deposition of H. Clay Davis.

That he is a resident of the county of Webb, in the State of Texas. That he has resided in said State since the year 1836. That he knows one Leonardo Manso, and has known him since the year 1835 or 1836. That said Manso now resides in the city of Matamoras, in the Republic of Mexico, and has always resided there since I first knew him; and that I have always understood and believe that he resided there many years before my acquaintance with him; and that he has not resided in De Leon's colony, in the State of Texas, or east of the Rio Grande, within the present limits of Texas, since the Declaration of Independence of the late Republic of Texas. That said Leonardo Manso is a Spaniard by birth. He further deposeth and saith: That he is personally acquainted with José Maria J. Carvajal, and that he also knew the late Fernando de Leon, now deceased, who was at and before his death a resident of Victoria County in said State of Texas, that said Carvajal was a brother-in-law of said De Leon.

Defendants then offered in evidence a deed of conveyance bearing date the 28th day of August, A. D. 1849, made by the plaintiff, Albert T. Burnley, by his attorney in fact, Levi Jones and Fielding Jones, to one Archibald C. Hyde, for a portion of the land in controversy. Also a certified copy of a deed of conveyance bearing date the 19th day of April, A. D. 1832, made by the plaintiff, Albert T. Burnley, by his agent and attorney in fact, Levi Jones, to one Mrs. Sarah F. Anderson, for an undivided moiety of the interests claimed by the said Burnley in and to the land in controversy, which said copy was duly certified from the records of Calhoun County by the keeper of said records, under his official signature and seal. Also certified copy of power of attorney bearing date the 23d of June, A. D. 1845, from said Albert T. Burnley to said Levi Jones, the execution of which power was proved by A. B. Shelby, one of the subscribing witnesses, on the 5th day of July, A. D. 1845, before John S. Jones, Esq., Chief Justice of Galveston County, and recorded upon that proof in the county of Victoria, on the 14th day of October, A. D. 1845, which said copy was duly certified from the records of Victoria County by the keeper of said records, under his official sig-

nature and seal of office. To the admission of said deeds in evidence before the jury the counsel for the plaintiff objected—

1. Because said deeds of conveyance, upon their face, appear to have been made and executed by plaintiff after suit commenced, and therefore cannot prevent his recovery of the land claimed in this suit.

2. Because said power of attorney was not proved up in the mode and manner, and by the officer authorized by law to take the probate thereof, and therefore was not entitled to record.

Which objections were sustained by the Court, and the said deeds of conveyance and power of attorney were excluded from the jury. To which ruling and decision of the Court defendants, by their counsel, excepted.

Defendants then offered to read in evidence to the jury deed of conveyance from Samuel A. White and wife to William E. Howth, which is as follows, viz:—

Deed from White and Wife to Howth.

REPUBLIC OF TEXAS,
County of Victoria.

Know all men by these presents that I, Samuel A. White, a citizen of said County and Republic, for and in consideration of certain property, as per deed bearing even date with this conveyance, and a valuable consideration to me in hand paid, the receipt whereof is hereby acknowledged, I have this day granted, bargained, aliened, and conveyed, and by these presents do grant, bargain, and sell unto William E. Howth, his heirs and assigns, a certain tract or parcel of land lying, being, and situated as follows, to wit: The place or point known as Indian Point, being part of the property upon which I now reside, commencing on the bay shore at the lower corner, a southeast corner of said survey upon the Lavaca Bay, thence up said bay shore to a point from which a parallel line with the upper or northwest boundary line from the front to the back line of said survey, thence with the back line down to the lower southwest corner, thence with the south boundary line to the place of beginning. As to include a full proportional front of the original survey of one-third of a league of land granted to me as my headright by the Government of Texas, the above being twelve hundred acres of the aforesaid tract or parcel of land, to have and to hold the above described land and premises, with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining unto him, the said Howth, his heirs and assigns forever, free from the claims of himself, his heirs and assigns, and from the claims of all persons whatsoever claiming or to claim the same.

In testimony whereof, I, the said White, set my name and affix

my seal in presence of the subscribing witnesses, this the tenth day of August, A. D. eighteen hundred and fifty-five.

S. A. WHITE. [SEAL.]
SUSAN A. WHITE. [SEAL.]

WILLIAM M. COOK.
THEDARORE MILLER.

REPUBLIC OF TEXAS,
County of Victoria.

Before me the undersigned, Chief Justice and *ex-officio* Notary Public for said county, personally came William M. Cook, who being duly sworn upon his oath, said that he was a subscribing witness to the within indenture, and that he saw the above-named S. Addison White sign, seal, and deliver the same as his act and deed for the purposes therein specified.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 13th day of August, A. D. 1845.

[SEAL.] GEORGE W. PALMER,
Chief Justice,
ex-officio Notary Public.

Filed and recorded 13th August, 1845.

THE STATE OF TEXAS,
County of Victoria.

I, G. Wm. Garrett, Clerk of the County Court in and for said county, do hereby certify that the within foregoing instrument of writing, to which this certificate is attached, is a true and correct transcript from the records of Deeds, vol. 2d, page 210, as the same appears on said records.

In testimony whereof, I hereunto set my hand and the impress of my official seal, at my office, in Victoria, this the 13th day of February, A. D. 1856.

G. WM. GARRETT,
Cl'k C. C. V. C.

Also read in evidence to the jury deed of conveyance from William E. Howth to William M. Cook, which is as follows:—

Deed from Howth to Cook.

REPUBLIC OF TEXAS,
County of Brazoria.

Know all men by these presents, that I, William E. Howth, for a valuable consideration to me in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, conveyed, and by these presents do grant, bargain, and sell unto William M. Cook, of the County of Galveston, Republic aforesaid, his

heirs, successors, and assigns, a certain tract or parcel of land lying, being, and situate as follows, to wit:—

The one undivided half or interest in a certain tract or parcel of land, situated in Lavaca Bay, at a point in said bay known as Indian Point, being the same purchased by me of Samuel A. White, as per deed bearing date the 10th day of August, eighteen hundred and forty-five, being twelve hundred acres, situated on the said bay, being the southeast portion of said White's survey of one-third of a league, commencing on the lower or southeast corner of said survey on the bay shore, thence up said bay and back for quantity.

To have and to hold the above described one-half interest, or part interest, with equal rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining unto him, the said Cook, his heirs and assigns forever, against the claim of myself, my heirs, and assigns, and by virtue of said deed of conveyance from said White to me, I do by these presents have and hold the aforesaid one-half interest free from the claims of all persons whatsoever, unto him, the said Cook, his heirs and assigns.

In testimony whereof, I have hereunto set my name and affixed my seal in presence of the subscribing witnesses, this 11th day of August, eighteen hundred and fifty-five.

It is understood that the said W. E. Howth sells and conveys the title he receives of Samuel A. White, only.

W. E. HOWTH.

REPUBLIC OF TEXAS,
County of Victoria.

Before me, James Ingram, Clerk of the county aforesaid, personally appeared the above-named William E. Howth, who signed and delivered the foregoing instrument of writing in my presence, for the purposes therein contained.

Given under my hand and seal of County Court in office, at Victoria, this 13th August, A. D. 1845.

[SEAL.] JAMES INGRAM,
Clerk.

August 30th, 1847.

I hereby transfer all my interest in the within document.

MARY A. HOWTH.

Filed for record, August 13th, 1845.

JAMES INGRAM,
Clerk.

Recorded in book 2, vol. 211, this the 13th August, 1845.

JAMES INGRAM,
Clerk.

Filed for record, 4th day of February, A. D. 1856, at 10 o'cl'k A. M.

WM. P. MILLEY,
C. C. C. C.

By HENRY LUHERS,
Dep'ty.

Recorded February 4th, 1856, in book E, fol. 1.

WM. P. MILLEY,
C. C. C. C.

By HENRY LUHERS,
Dep'ty.

THE STATE OF TEXAS,
County of Calhoun.

I, William P. Milley, Clerk of the County Court in and for the county aforesaid, do hereby certify that the foregoing is a true copy from the records of my office, book E, fol. 1st.

WM. P. MILLEY,
Clerk C. C. C. C.

And also read in evidence to the jury, articles of agreement between the defendants, William M. Cook and Samuel A. White, as follows:—

Agreement between Cook and White.

STATE OF TEXAS,
County of Calhoun.

Articles of agreement made and entered into this twenty-seventh day of August, eighteen hundred and forty-six, by and between Wm. M. Cook and S. A. White of said county, witnesseth: That whereas, said persons hold in common an undivided interest in a certain tract of land, say twelve hundred acres, being the same purchased by Wm. E. Howth of S. A. White, as per deed dated the tenth of August, eighteen hundred and forty-five, the one-half interest in which was sold by said Howth to William M. Cook, as per deed bearing date the eleventh of August, eighteen hundred and forty-five, being that portion of said White's headright, situated on Lavaca or Matagorda Bay, on the west side of said bay, as per certificate No. 37, issued by the board of land commissioners of Jackson County, and field notes dated February, 1842.

And whereas said White and Cook wish to build a town at Indian Point, situated so as to include the said tract or parcel of land, and for the sake of convenience in making titles to lots, and other good reasons, the said parties hereby agree to divide the said tract of land

in order that each of said parties may hold a distinct and separate property, therefore, the said parties have agreed as follows:—

That they will continue the present plan of the town as per survey made by George Thulepape through all the front of said tract of twelve hundred acres of land, which shall be included between the bay shore and a line to be drawn one mile from said shore across said tract of land to run parallel with the said bay shore, with the upper or northwest boundary line to the lower or southeast boundary. All that part of said tract of land which shall be included within said boundaries shall be and is hereby divided equally between said parties by ranges of blocks according to the said plan, the upper or northwest corner of the first range of lots to begin at a point in said bay, say 255 yards below the upper or northwest corner of said White's survey of one-third of a league of land, being his headright as aforesaid.

Said ranges to be divided as follows, viz: as per mutual agreement the said Cook shall be entitled to the first range of blocks according to said plan, and S. A. White to the second range, and so on by dividing equally between the parties the whole of said portion of land, between the said parallel line and the bay shore, the remaining portion of said land lying west of said parallel line to be divided into four equal parts between said parties, each portion to front on said parallel line two hundred and ninety-seven fr. varas, more or less, thence back to the west boundary line. The said White to have first choice, and Cook to have second, there being four parts within the above limits to be equally divided between the said parties as aforesaid. The parties to these presents do hereby mutually agree to comply with the terms of this instrument, any informality herein to the contrary notwithstanding.

In witness whereof we sign this act this the day and date above written. (Scroll for seal.)

WM. M. COOK. [SEAL.]
S. A. WHITE. [SEAL.]

STATE OF TEXAS,
Calhoun County.

Personally appeared before me, Isaac Brugh, Clerk of the County Court in and for said county, William M. Cook and S. A. White, who acknowledged the within article of agreement, and that they executed it for the purposes therein expressed.

Given under my hand and private seal, having no seal of office, this the 28th day of August, 1846.

ISAAC BRUGH, [SEAL.]
Cl'k C. C.

This is to certify that I have no objections to the disposition which W. M. Cook has made with the interest conveyed to him by virtue

of deed, bearing date the 11th of August, 1847, by me, as set forth on the next page.

W. E. HOWTH.

Defendants also offered and read in evidence to the jury the deposition of Geo. W. Valk, who testified as follows:—

Deposition of George W. Valk.

That he came to Indianola, Calhoun Co., Texas, on the 9th December, 1845, at which time S. A. White, one of the defendants, resided on the west bank of Matagorda Bay, on a tract of land known as his headright in the county of Calhoun, at that time a part of Victoria County and Victoria Land District. That the warehouse now occupied by William M. Varnell was built by said defendant White, on said tract of land, and that White resided in a house situated where C. B. Hubbell's stable now stands, within the bounds of said survey; that he afterwards became acquainted with palmetto trees situated on Matagorda Bay, known as the upper corner of said survey. Afterwards in the month of February, 1846, saw William M. Cook with the District Surveyor surveying a portion of said tract. That some time after said last mentioned survey, Wm. M. Cook, one of the defendants, built warehouses on the tract, and rented the same to the United States quarter-master, and that sundry other persons have built houses and inclosed lots at various times on said land, as tenants and purchasers from defendants. That the buildings built by defendant Cook, and now in the occupancy of the United States quarter-master, are worth $3,000. Witness further deposes that he has leased and now occupies part of a tract of land, known as the Wilson survey, from the said defendant Cook, on the west side of Matagorda Bay, about two and a quarter miles northwest from the mouth of Powder-horn Bayou, and that Ernest Witherbut occupies and holds a part of said tract, and has so held and occupied the same for more than three years.

Also the deposition of Thomas Hanson, which was read in evidence to the jury, as follows, viz:—

Deposition of Thomas Hanson.

I am sixty-eight years of age. I reside in Calhoun County, and have done so nearly twenty-six years—that is, in the territory now comprising Calhoun County. I am acquainted with Levi Jones by sight only. I am acquainted with S. A. White, Esq., and with Col. William M. Cook. The first settler within the present limits of Indianola (then called Indian Point), was a Mr. Larch, who came from Texana, and was formerly from Louisiana. He came down in about 1833. His wife died here, and then he left and went back to Louisiana, and has not been seen by me since. Mr. White (S. A. White) was the next settler who occupied the same house that Larch

had previously occupied about 1834. At that time there was no other person residing near, and horses, cattle, &c. were running wild here. I was then pilot at the Pass Cavallo, and in Matagorda Bay. I never saw a Mexican, or any one but Americans, residing on the place or near it; and Caranchua Indians occasionally. The Mexicans were afraid to come down, because of the Indians. I do not know what colonist De Leon had above, but Juan Caño, or Benito Morales, nor Leonardo Manso, nor any such persons were ever here; and there was never any sign of settlement here before Larch built the house he and White lived in.

I knew Mrs. Margaret S. Wright, who was residing in De Leon's colony. From the time I first knew her she was in the habit of going around among the people, and engaging their hogs when they were fattened. She used to drive them down into Mexico, and sell them, sometimes several hundred head at a time. She was an active, intelligent woman, and a very useful woman.

I knew Joseph M. Carvajal first about 1834, or soon after. He married a daughter of Martin de Leon, and left the country in 1836 (about). I knew Mr. Eleazar Killpatrick and J. H. Beck, who resided on the beach, between Indian Point and Powderhorn Bayou (now Indianola), about the years 1842 and 1843. The place called Carles, however, is now in the corporate limits of Indianola, and lies north of Powderhorn Bayou, between the Bayou and Indian Point in the bend.

I never saw any Mexicans survey land. It was the report, and commonly stated, that they never used chain, or other actual measurement, but measured by the trotting of a horse. A certain time was allowed to trot off a league, and fast trotting horses were best, as they could trot around a larger tract than a slow horse in the time allowed for a league.

I sailed into Powderhorn Bayou first in the early part of the year 1832 with my pilot boat. I gave it the name of Powderhorn, because of the circumstance of finding on its banks a spoon and a powderhorn; and as the form of the bayou in its meanders was more like the horn than the spoon, I called it Powderhorn. I found two fathoms water inside the bayou, and about seventy-five yards wide. To all of which I solemnly swear. So help me God. The words "was the next settler," interlined in the first line of the third page, and read and approved by me as interlined before signing.

T. HANSON.

Sworn to and subscribed before me at Indianola, county and State aforesaid, this 31st day of January, 1856.

H. B. CLEVELAND,
Mayor of the City of Indianola.

Also the deposition of Eleazar Killpatrick, which was read in evidence to the jury as follows, viz:—

Deposition of Eleazar Killpatrick.

I, Eleazar Killpatrick, am acquainted with Levi Jones, one of the plaintiffs, and with S. A. White and Col. W. M. Cook, the defendants, and have been acquainted with them ever since before the commencement of this suit. I knew the land owned or claimed by S. A. White in Calhoun County, situated on the west side of Matagorda Bay, north of and near the mouth of Powderhorn Bay, and claimed also by the plaintiffs in this suit, a portion of which is now occupied by John Schwartz, Moore, and others. In the fall of the year 1841 I went on the said land as tenant of S. A. White, who was then residing on the place, and prepared for making a crop, and during the year 1842 I cultivated the land, and made a crop there. Mr. J. H. Beck also cultivated a portion of the land during that year under S. A. White. Our improvements extended below the bayou upon which Mr. Moore now resides, and near to the mouth of Powderhorn Bayou, and also above said bayou where it empties into Powderhorn Bay. In 1843 I moved away, and Mr. White cultivated the said land; and I returned in the fall of 1843, and again cultivated the land in 1844. In the year 1844 Mr. Schwartz came there under Mr. White, and has remained there ever since.

The bayou upon which Mr. Moore lives is tributary to Powderhorn Bay. The Reverend William C. Blair purchased the land now occupied by Mr. Robert B. Moore from S. A. White, and made considerable improvements there in 1846, as the witness believes, and voluntarily sold out, and Mr. Moore purchased and settled on the land in 1847, and has resided there ever since. And further deponent saith not.

ELEAZAR KILLPATRICK.

Signed before me, this 4th day of February, 1856.

JAMES INGRAM,
U. S. Commissioner.

Cross-examined.

I think S. A. White and William M. Cook claimed the land adversely to each other. S. A. White told me that he had entered all the land about Powderhorn Bayou. S. A. White first occupied and lived in a warehouse built by Larch. J. H. Beck and family, as also my own family occupied the same house. That house stood in and about the centre of the town of Indianola. It is my opinion that the town house where we lived was on one quarter of a league of land claimed by De Leon, but I am not certain; but I know that it was on the property in litigation between White and De Leon. The place referred to is three miles or more above the mouth of Powder-

horn Bayou; the field cultivated was about the same distance from where we lived as to the mouth of Powderhorn Bayou. I moved to the bay in the fall of the year 1841, and raised a crop in the year 1842 on the bayou. Our second residence, of White and myself, was about one mile above where we first settled, and about four miles above the field we cultivated. We lived at no other places on the bay but those mentioned. White had no land ready for cultivation when I moved to the bay. J. H. Beck had some twelve or eighteen acres in cultivation, and he had cleared the land of undergrowth, or, as called, chapparal. The bay and bayou formed a portion of the fence, and the balance was made of post and plank; but there was not a great deal of fencing done, but a good deal of trouble. I think the plank fence was from one to two hundred yards long. White and myself put up the fence in the year 1844. My improvement was on the southwest side of Powderhorn Bayou, and contained some eight or ten acres. I planted my corn in the year 1842, and sold it to J. H. Beck. I had no fence around my farm. Beck gathered the crop. He only made one crop, and then moved away. Beck did not live any other place but with White and me, as above stated. After Beck's time, different individuals cultivated the same ground. William C. Blair, I think, did not purchase any of the said land, but bought land further up the bayou. He did a great deal of work on his land. To the best of my recollection, Blair purchased in the year 1846.

ELEAZAR KILLPATRICK.

Defendants also produced and offered in evidence to the jury the deposition of James L. Allen, and the following portion of said deposition was read to the jury without objection, viz:—

Deposition of James L. Allen.

"That he knows where the headright survey of S. A. White, one of the defendants, lies; he saw the upper corner established by Cramer, who was the district surveyor at the time; it is about three to three and a half miles above the mouth of Powderhorn Bayou, upon the west side of Matagorda Bay. That said White had said survey of land in his possession in the year 1842, by residing on the same with his family, and he remained on it until 1847. Said land lies on the west side Matagorda Bay, in Calhoun County, Texas."

To the residue of the deposition of said James L. Allen, in which said witness testifies "that he [White] left persons in possession of his headright when he left in 1847, and that said White and those holding under and for him had continuous possession of said land since the month of January, 1842, the 15th day of said month being the day the witness became acquainted with said White and his possession by residence, as aforesaid," the plaintiff, by his counsel, objected, because said witness testifies loosely therein, does not state the names of the persons who held under White, or how they held, so as to give plaintiff an opportunity of disproving his statement,

and states conclusions of law instead of matters of fact. Which objection was sustained by the Court, and the residue of said deposition excluded; to which decision of the Court defendants, by their counsel, excepted.

Defendants then offered to read to the jury the deposition of Wittenburg Ernst, as follows:—

Deposition of Wittenburg Ernst.

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES
for the District of Texas.

ALBERT T. BURNLEY
vs.
S. A. WHITE, WM. M. COOK *et als.* } District of Texas, *ss.*

On this 13th day of December, 1853, personally appeared before me, W. J. Howerton, a commissioner appointed by the District Court of the United States for the District of Texas, duly commissioned and qualified, residing at Indianola in the District of Texas, William M. Cook, who being duly sworn by me, deposes and says: That he is one of the defendants in the above entitled cause. That said cause is now pending in said court. That Wittenbert Ernst, of the city of Indianola, in the County of Calhoun, and State of Texas, is a material witness for the defendants, whose testimony is necessary in said case, and in the trial thereof, as deponent is advised and believes, and further, that said witness lives and resides at the city of Indianola, in the County of Calhoun, and State of Texas, at a greater distance than 100 miles from Galveston the place of trial of said cause; and further, the deponent says, that neither the said Burnley, plaintiff, or his agent or attorney, resides within one hundred miles of the place where the examination of the witness is expected to take place.

WM. M. COOK.

Sworn to and subscribed before me, this day and date above written.

W. J. HOWERTON,
U. S. Com'r.

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES
for the District of Texas.

ALBERT T. BURNLEY
vs.
S. A. WHITE, WILLIAM M. COOK *et als.* } *ss.*

Let Wittenbert Ernst, the witness named in the foregoing and annexed affidavit, be examined *de bene esse* before me accordingly,

at the tavern house of Casimer Villeneuve, in the city of Indianola, county of Calhoun, and State of Texas, on the 15th of December, A. D. 1853, at 10 o'clock. Dated this 13th day of December, A. D. 1853.

W. J. HOWERTON,
U. S. Com'r District of Texas.

UNITED STATES OF AMERICA.

DISTRICT OF TEXAS,
City of Indianola, ss.

Be it remembered, that on this 15th day of December, in the year of our Lord one thousand eight hundred and fifth-three, before me, W. J. Howerton, a commissioner duly appointed on the 20th day of April, 1850, by the District Court of the United States in and for the District of Texas, by virtue of the acts of Congress entitled, "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled, "An act in addition to an act, entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed March 1st, 1817," and the act entitled, "An act to establish the judicial courts of the United States," passed September 24, 1789, personally appeared Wittenbert Ernst, a resident of the county of Calhoun, and State of Texas, a person of sound mind and lawful age, a witness for the defendants in civil suit now depending in the District Court of the United States in and for the District of Texas, at Galveston, wherein Albert T. Burnley and Royal A. Porter are plaintiffs, and William M. Cook *et als.* are defendants, and the said Wittenbert Ernst, being by me first carefully examined and cautioned, and sworn to testify the whole truth and nothing but the truth, did depose and say: That he knows Fielding Jones and Thomas Wilson's surveys. The latter made for Col. Wm. M. Cook, said surveys lie on the west side and fronting Matagorda Bay, and is covered in part by the present city of Indianola, Calhoun County, and State of Texas. That he knows said Cook had possession of the lower half of said Jones's headright survey, and of the said Thomas Wilson's survey, in the spring of the year 1846. That he is cultivating a garden for and under said Cook in part, on both of said surveys of land. That the said surveys were improved upon in the latter part of the year 1845, or the spring of 1846. That his garden, which he holds from the person who had it for Cook and held it in the spring of 1846, and that he, witness, has held it ever since by cultivation.

WITTENBERT ERNST.

UNITED STATES OF AMERICA,

DISTRICT OF TEXAS,

City of Indianola, ss.

I, W. J. Howerton, a commissioner duly appointed on the 20th day of April, 1850, by the District Court of the United States in and for the District of Texas, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled, "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and an act entitled, "An act to establish the judicial courts of the United States," passed September 24, 1789, do hereby certify that the reason for taking the foregoing deposition, is that the witness lives in the city of Indianola, Calhoun County, State of Texas, more than one hundred miles from Galveston, State of Texas, the place of trial of the said cause for and in which said deposition was taken and is necessary.

I further certify that I did not have any notice made out and served on the said Burnley and Porter, plaintiffs, or adverse party, their agent or attorneys, to be present at the taking of the deposition, and to put interrogatories if he or they might think fit, and that notice of the time and place of taking the said deposition was not made out and served on the said Burnley and Porter, plaintiffs, or adverse parties, because neither the said adverse parties, nor any attorney or agent of said adverse parties, was at the time of taking said deposition was within (100) miles of the said city of Indianola, the place of taking the said deposition to the knowledge of the undersigned.

I further certify, that on this 15th day of December, 1853, I was attended by the witness, who is of sound mind and lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was reduced to writing by me in the presence of the said witness; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing the same, and forwarding with my own hand the same to the court, for which it has been taken. I further certify that I am not of counsel or attorney to either of the parties in the suit in said deposition and caption named, or in any way interested in the event of said civil suit named in the caption.

In testimony whereof, I have hereunto set my hand and seal (scrawl used by way of seal) this day and date last above written.

[SCRAWL.] W. J. HOWERTON,

U. S. Com'r.

To the admission of which deposition the plaintiff, by his counsel, objected.

1. Because said witness was a tenant in possession under the defendants, and interested in the issue of the suit.

2. Because he is liable for mesne profits and liable over to defendants.

3. Because he certifies to a conclusion of law, and so loosely as not to be certain and intelligible.

Which objection was sustained by the Court, and said deposition excluded, to which ruling and decision of the Court the defendants, by their counsel, excepted. The defendants then called William L. Lacayer, who, being duly sworn, testified:—

Testimony of William L. Lacayer.

That he had known Indian Point, now called Indianola, from 1837 to 1853. Samuel A. White lived there, to witness' knowledge, from 1844 to 1846. White resided at what was called Indian Point. The wharf was near the upper end of Indian Point. White's warehouse was at the wharf. William M. Cook resided about five hundred yards from the wharf. White had a dwelling-house there; kept boarders; had stock, and cultivated a garden. The German depot was near the wharf. In the spring of 1845 he knows that White sold town lots to various persons. White's commission-house, S. A. White & Co.; I first knew them in 1849, and I knew them in business there up to 1852. The first time I saw Cook there was in 1852. I knew White resided there from 1844 to 1846, after which I went to the Rio Grande during the war between the United States and Mexico. White's wharf was not built in 1846. The warehouse was, and Germans were living there and bought town lots of White. A number of good houses were erected there on the land, one owned by a man named Miller. The whole town site was claimed by White, and he offered for sale, and sold town lots to all who wished to purchase. I do not know whether White resided there between 1846 and 1852, as I was not there during that period."

Defendants then called John Henry Brown who, being duly sworn, testified:—

Testimony of John Henry Brown.

That he has known Indian Point since June, 1842. Samuel A. White (the defendant) and others then lived there. White's residence was then in his own headright location. It was near the upper line of the tract, about thirty or forty yards from the line. The wharf was on the Manchaca survey. I do not know when White first went to Indian Point. In the fall of 1840, White was collecting his stock and, from general notoriety, was removing from his place on the Navidad to Indian Point. I then lived on the Lavaca River, and saw him collecting his stock together. The first wharf

was built in 1845 or 1846. Huck built there in 1848. He was then occupying White's warehouse, which was not on White's headright location, but on the Manchaca. Cook built there, or remodelled a house there in 1848. White did not remove his family from there until 1849, in the spring, when he left me agent of all his property and business there, under a full power of attorney to sell and dispose of the same, rent, &c. Dr. Baldwin's residence was below Cook's warehouse. Huck's below that. Rogers's was below Huck's, and Major O'Brien's house was below Cook's warehouse. Root lives adjacent to Stapp's residence; he went there in January, 1849. White's old residence was worth, with the improvements, in 1849, one thousand dollars. Cook's place, one thousand dollars. Baldwin's, seven hundred dollars. Chambers' Etter's, six hundred dollars, now three thousand dollars. Wharf, in 1849, worth from two thousand to four thousand dollars. Huck's house, two thousand dollars. O'Brien's house two thousand five hundred dollars. Stapp's, three hundred dollars. Rook's, fifteen hundred dollars. White laid out his town in 1845, and sold town lots then and ever since. I was his agent to sell lots in 1848. Eutaw house worth two thousand dollars. House of Doctor Farquehar and drug store worth six hundred dollars, all in the town. War commenced between the Republics of Mexico and Texas in 1835. They were at war on the 6th day of April, 1836. The battle of San Jacinto between the armies of the two Governments was fought on the 21st day of April, A. D. 1836.

Cross-examined by Plaintiff's Counsel.

Says that settlements were first made in 1848, below, or south of the line on the map, which line is the common boundary line between the Fernando de Leon and Benito Morales tract.

Plaintiff, by his counsel, then asked the value of the use and occupation of the land, &c. Defendants, by their counsel, objected to any proof by plaintiff of the value of the use and occupation of the land and improvements, because the said plaintiff had not complied with the statute (see 2d act of 1844, *Hart. Dig.*, art. 3232) by offering to submit the question of pay for improvements to arbitrators' offering bond to the defendant to comply with the award, &c. But the Court overruled the objection, and allowed the inquiry to be gone into. And defendants, by their counsel, excepted to the said ruling and decision.

Examination of said Brown resumed.

Dr. Baldwin's house, in 1848, was worth eight hundred dollars; rent of land and house since that time, worth ten dollars per month; Chambers Etter's, six dollars per month—since the addition thereto, ten dollars per month; Stapp's, three or four dollars per month; Rook's, ten dollars per month; Huck's, ten dollars per month. These

were all the houses on the ground in 1848. The witness' uncle, Mr. William H. Kerr, was appointed by the Court to make a survey in the case of De Leon *vs.* White; he made the survey from a private memorandum he had. Not being able to find the common corner in the line of the De Leon and Morales grants, he referred to his private memorandum, which showed that De Leon's upper corner was upon White's bayou, reversed the lines and run back to the neighborhood of where Beaumont's line would terminate upon the bay. He did not find John McHenry's well with barrels sunk, but at some forty to seventy varas distance he found a well and some bearings, somewhat out of the way; but yet, upon the supposition that the beach had changed by the action of the water, would in some degree answer to the calls, there he stopped; so that there is some uncertainty as to the precise place of the corner, but witness thinks if Beaumont's line be subtended to the bay, it will be somewhere near the corner—Cook's warehouse, however, being certainly above and outside the Morales survey. White's town was first laid off in lots 80 by 50 feet; afterwards 90 by 50 feet, and twelve lots in a block. White's old residence was included as a portion of a block in the plan of the town. Metz was the only person who owned land beyond the town blocks. The lower corner of Francisco de Leon's quarter of a league was the upper corner of the Morales grant. White claimed all of the land to the extent of the survey.

Re-examined by Defendants.

The land without the improvements was only valuable as a corn ranch, and for that purpose would produce nothing in the way of rent. The land without the improvements was not worth more than one dollar per acre. The land is worth nothing for a town site now, as commerce cannot get there by water. There is scarcely any marsh on the Morales grant, not more than one hundred and fifty acres. White's survey lapped over and lay partly on De Leon's survey and Morales's survey. Fielding Jones's survey was made in 1842, and was re-surveyed by Linus, in 1848 or 1849. Wilson's survey was made about the same time.

Defendants then offered and read in evidence part of the deposition of Samuel Crosby, Commissioner of the General Land-office of the State of Texas, as follows, to wit:—

Testimony of Samuel Crosby.

I am the Commissioner of the General Land-office, and have been since March 1st, 1852. I was Chief Clerk in said office, from the first day of September, 1845, until the last day of February, 1852. The field notes of the survey upon Matagorda Bay, for 640 acres in the name of Fielding Jones, by his assignee, William M. Cook, were filed in the General Land-office, February 20, 1850. The field notes

of the survey for 640 acres in the name of Thomas Wilson, by assignee, William M. Cook, were filed in the General Land-office, July 6th, 1848. The archives of De Leon's colony were filed in the General Land-office, subsequent to the passage of an act of the Legislature, of February 8th, 1850, and by virtue of that act.

Also the deposition of John Buchanan, who testified as follows:—

Testimony of John Buchanan.

I am the translator or Spanish clerk in the General Land-office, and under the Commissioner have charge of all the Spanish documents in the office. Nothing appears of record in the Spanish branch of the office to show at what time after the passage of the act of February 8th, 1850, the records of De Leon's colony were received in the office. It is presumed that the grants to Juan Caño and Benito Morales were filed with the other grants of that colony, at the same time, as nothing appears to the contrary; they are bound in the files with the others. The evidences of grants to Juan Caño and Benito Morales are original documents.

Defendants also produced and read in evidence to the jury the deposition of George W. Garnett, as follows:—

Testimony of George W. Garnett.

I, George W. Garnett, am Clerk of the County Court of Victoria County. I have made diligent search in the records of the said County Court of Victoria County, and can find no record of any grant of the Government of Coahuila and Texas, of any land to Juan Caño, bordering upon Matagorda Bay, nor any title to Benito Morales for any land upon said bay, and no such grant has ever been recorded in the Recorder's Office of said Victoria County.

Also the deposition of Henry Luhers, who testified as follows, viz:—

Testimony of Henry Luhers.

I am about thirty-two years old. I am acquainted with Levi Jones, of this county, and with Samuel A. White, of Victoria County. I do not know who are the parties defendant not named. I have no interest in this suit or its results. I am Deputy Clerk of the County Court of Calhoun County, and have now in my custody the records of deeds, mortgages, &c., and other books and public papers pertaining to the Clerk's Office. William P. Mibley is the Clerk, and is now absent from the county of Calhoun. I have examined the records of deeds, &c., in the county of Calhoun, at the request of Sterling T. Leawell, Esquire, on behalf of defendants, and find that there is no grant from the Government of Coahuila

and Texas, or from any other power, government, or person, to Juan Caño, or to Benito Morales, or either, or both of them, for any lands lying in said Calhoun County, or elsewhere, recorded in said office. I have also diligently searched, and find that there is no deed or deeds, transfers, liens or titles, or order of titles, recorded in said county, made by said Benito Morales and Juan Caño, or either or both of them, to Leonardo Manso, or other person or persons whomsoever. And the said witness being asked, at the request of defendant's agent, if there was any deed or other conveyance recorded in his office from said Leonardo Manso to Levi Jones, A. T. Burnley, or other person, the witness asked for time to examine said books of record, and time having been allowed him, answered, I have made diligent search, as requested yesterday, and find that there is not any deed recorded in the books of records of deeds, &c., in Calhoun county, of any conveyance to or from Leonardo Manso, to or from any person or persons whatsoever, of any land situate in said county or elsewhere.

Defendants here closed their testimony, and rested their defence.

The plaintiff then offered the following, as rebutting evidence.

The plaintiff offered to read in evidence to the jury the deposition of Mrs. Luy Eseulena de Leon, to the admission of which, the defendants, by their counsel, objected, on the ground that the testimony thus obtained was in answer to the last or general interrogatory propounded, viz: "State all other facts, fully and particularly, which you may know which will be of advantage to the plaintiff in his suit." And all the special and particular interrogatories preceding the last general interrogatory above specified, were in relation to the proof of the execution of certain deeds, exhibited with said interrogatories, and were not at all germain to the matter disclosed in the answer to the said general interrogatory, and in relation to which the defendants could not therefore cross-interrogate the witness. But the Court overruled the objection, and permitted the said deposition to be read in evidence to the jury, and it was read as follows:—

Testimony of Mrs. Luy Eseulena de Leon.

She knows nothing in regard to anything in the interrogatories except the last. She lived in Victoria, and on the Garcilas, in 1835. When Urrea came to Victoria, in 1835, with the Mexican army, he went to the ranch and took with them the archives of De Leon's colony. Witness was living in the rancho, her husband being a prisoner in Matamoras. When General Rusk came on, after the battle of San Jacinto, he ordered her husband, Fernando de Leon, to be taken a prisoner, and the house was robbed. There were Americans came to the house; who they were she don't know; they took a part of the archives and papers of her husband, and she gathered up the rest: whatever became of those that were taken, she does not know.

To the ruling and decision of the Court, admitting said testimony, the defendants by their counsel excepted. Plaintiff also introduced and read in evidence to the jury, a portion of the deposition of José Maria J. Carvajal, which is as follows:—

Testimony of José M. J. Carvajal.

My information in regard to the breaking open the trunk containing the archives of De Leon's colony, was derived from Fernando de Leon and his family. A few days after the occurrence, I was shown the broken trunks and the disordered papers. I afterwards examined the archives in Opelousas, and found some headrights and other valuable papers among them; some that I had bought myself, were missing. And I have also an impression that some papers relating to De Leon's contracts with the Government, were also missing.

Plaintiff then offered and read in evidence to the jury, the petition of Power and Hewetson to the Governor of Coahuila and Texas, for an augmentation of their contract, the contract made thereon, and all papers connected therewith, as follows:—

Residue of Documents relating to Colonial Contracts of Power and Hewetson.

To his Excellency the Governor:—

Citizen James Hewetson, for himself, and in the name of citizen James Power, represent to your Excellency, that, in the latter part of September, in the year 1826, he solicited of this Government to establish a colony with four hundred families from Europe and this country. And as the lands are within the border leagues, the Government of this State had to send them up to the general government of the nation, in consequence of the general law of 18th August, 1824, with a favorable report, on account of which it was pleased to grant its approval under date of 22d April of last year; but as the quantity of land is so small that it would scarcely contain the one-half of the families aforesaid, and in consideration of the expenses which I have incurred, and am about to incur, to effect the settlement, together with other exertions to carry into effect my undertaking, I am under the necessity of entreating of the bounty of your Excellency, to deign to augment the land granted to me in the border leagues, so as to extend from the River Guadalupe along the coast southwestwardly to the boundary of the State with that of Tamaulipas, offering to comply in all cases with the constitution and laws of the general government as well as those of the State, wherein I shall receive favor.

(Signed) JAMES HEWETSON.

Leona Vicario, 13*th March*, 1829.

In the city of Leona Vicario, on the second day of the month of

April, in the year one thousand eight hundred and twenty-nine, the citizen Mariano Grande having presented himself, with the foregoing power of attorney, the original of which is annexed to this file of documents, to agree with the Government in the name of the citizens James Power and James Hewetson, on the manner and terms by which they are to effect the augmentation of lands they applied for in their memorial of the 13th March last, can be effected, which augmentation this Government has agreed to, and inasmuch as it is so ordered by the general Government in its resolution of 22d April, 1828, which in original appears in these documents, they have agreed to the following stipulations and conditions:—

1st. The boundaries of the land to be added to that already contracted for with the Government, dated June 11th, 1828, is to be augmented for the present. Beginning on the bank of the River Guadalupe at the point where those of the first contract commenced, thence on a line parallel with the coast to the River Nueces, the boundary recognized between this State and the State of Tamaulipas. Thence down the left bank of the said river to its mouth, where it disembogues into the sea. Thence upward with the coast to the mouth of the River Guadalupe, and thence up the same river to the point where these boundaries began, they comprising the ten leagues of the coast and border, and no more.

2d. The empresarios shall receive the land as an augmentation to the aforesaid contract made on the 11th June, alluded to in the foregoing articles, and as such shall be subject in its adjudication to the same requirements agreed upon in that contract, which must be punctually observed by the aforesaid Empresarios.

And his Excellency the Governor, and the Attorney, in the name of the Empresario, having mutually agreed to the stipulations contained in this contract, reciprocally bind themselves to its faithful fulfilment, and signed the same before me, the Secretary of State, in testimony thereof. The original file of documents remaining in the archives, it was ordered that a certified copy of it be given to the parties interested for their security and for the purposes therein contained, José Maria Viesca, José Maria Grande, Santiago del Valle, Secretary.

A copy (signed) SANTIAGO DEL VALLE,
Secretary.

Executive Department, Free State of Coahuila and Texas.

MOST EXCELLENT SIR: Citizen James Power most respectfully represents to your Excellency, that as Empresario in conjunction with citizen James Hewetson to settle (with previous approbation of the General Government) in the Department of Texas, I contracted in April, 1829, with your Excellency, for lands within the Coast Border Leagues from Lavaca Creek to the River Nueces, and ten leagues in breadth, and having been informed that a part of lands of the Mission

of Refugio are included within these limits, with a view to obviate any difficulty and to prevent mistakes which may arise through the decree issued by your Excellency, in consequence of my former petition, I pray that your Excellency may be pleased to expressly declare that no lands within the Ten Coast Border Leagues herein referred to, shall be considered as appertaining to the mission, except those held by *bona fide* and original titles given at the time the mission was founded, leaving no room for claims to be set up for those lands under any other species of documents of any kind or nature whatsoever, and likewise that your Excellency will be pleased to grant permission to me to found a town out of the four hundred families I have to bring into said Department of Texas, at the same place formerly occupied by said mission, the members of it having dispersed, and it being deserted and in a state of almost entire dilapidation, obligating myself to pay the amount of the value of the few remaining buildings according to the award of appraisers and in conformity with the 35th Article of the colonization law, and to indemnify the persons who may prove to be the owners of those deserted leagues for the value of them.

The site which I have indicated, and which I pray your Excellency to assent to, for the location of the town, is peculiarly eligible, and evidently advantageous for the purpose, besides which there is no other place within the district I have to settle adapted for a town. I therefore pray your Excellency will be pleased to decree favorably to this my petition wherein I shall receive favor.

Leona Vicario, 21st April, 1830.

(Signed) JAMES POWER.

LEONA VICARIO, 21st April, 1830.

The foregoing petition presents two points which the petitioner requests the Government to determine upon. As to the first, the Government decrees that no lands shall be considered as appertaining to the Mission of Refugio, except those which are covered by *bona fide* original titles, and without this requisite or some other equally valid in its nature, presented by an individual community or corporation to accredit them right of property, the lands will belong to the respective contracts of colonization, which have been already made according to the limits prescribed in them, or to the vacant lands of the State. And as to the second: The petitioner will request the political chief of the department at Bexar, to report as to the public or general benefit which may result by establishing the town at the place referred to. Communicate this decree to the party interested, that he may make such use of it as may suit his purposes.

(Signed) VIESCA.

SANTIAGO DEL VALLE,
Secretary.

The copy of the original on file in the archives of the Secretary's office, in my charge, was taken by order of his Excellency, the Governor.

(Signed) SANTIAGO DEL VALLE,
Secretary.

Leona Vicario, 8th April, 1831.

Department of State, Bureau of the Secretary of Foreign Relations.

MOST EXCELLENT SIR:—

His Excellency the Vice President has, with the greatest deliberation, informed himself of the contents of the file of documents which have been formed at the instance of the Mexican Empresario, Martin de Leon, to suspend the jurisdiction of the foreigner, James Power, over the coast border leagues, comprehended between the Rivers La Baca and the Nueces, and his Excellency the Vice President concurring with the opinions of his Excellency, General Manuel Mier y Teran, in his report on the subject, has thought proper to decide, That the grant of land made to Power by the Supreme Government on the 22d April, 1828, can be understood in no other manner than according to article 2d, of the General Colonization Law of 18th August, 1824, that is, as regards the vacant lands, exclusive of those which are private property, and consequently Power will be put in possession of the lands appertaining to his contract, and Martin de Leon of that which he has proved to belong to him, which by order of his Excellency, I communicate to your Excellency, for the purposes therein contained. God and Liberty.

(Signed) ALAMAN.

To his Excellency, the Governor of the State of Coahuila and Texas.

Mexico, 23d December, 1831.

A copy of the original on file in the archives of the Secretary's office, in my charge, from which it was ordered to be taken by direction of his Excellency the Governor.

(Signed) J. MIGUEL FALEM,
Secretary.

Monclova, 7th Dec'r, 1833.

Executive Department, Free State of Coahuila and Texas.

In view of the decree No. 177, of the Honorable Congress of the State, authorizing the disposal of the lands and sale by auction, to the highest bidder, of the town property belonging to the extinct mission of Refugio, and in consideration of the solicitations made to the government by the citizens James Power and James Hewetson, and also of the reports which your honor has made on the same subject under date of the 6th June, and 3d July, of the past year, 1830, and of the documents on file in relation to this matter, I have thought

proper, in order that the said law should be better understood, to issue the following instructions:—

1st. Each of the families or single persons whose names appear on the annexed list, and belonging to the Mission of the Espiritu Santo, shall receive the quantity of land to which they are entitled, according to the provisions of article 14 and 15 of the Colonization Law of the State, which land shall be given to them within the area which appertained to the said mission, and so appertained to those families and individuals, as to intermix them with the other settlers, giving them to understand that they are bound to cultivate it in strict conformity with the law aforesaid.

2d. To each of the families or single persons above mentioned, a yoke of oxen or bulls, with the necessary farming utensils, will be given to them gratis, by the citizens Power and Hewetson, who have voluntarily engaged so to do, as contractors for the colony, the area of which embraces the lands heretofore known as the lands of the Mission of Refugio.

3d. The parties receiving the oxen or bulls, shall not kill or sell them, and should they at any time alienate their lands, the animals aforesaid shall, if still in existence, be returned to the Empresario, nevertheless understood, that should they have died, or been lost in their service, they shall not be bound to replace them.

4th. The said Empresarios are obligated to receive into their colony, all Mexican families who may present themselves as settlers, provided they possess the necessary qualifications, and therefore the inhabitants of Goliad, and others who have applied to the government for land at that point, can present themselves to the Empresarios aforesaid, who shall receive them as settlers, to be included in the number of families they have contracted for.

5th. As it appears by the information already referred to, that the point most eligible for the establishment of the town or city of the colony of Power and Hewetson, is that which has been occupied by said Mission of Refugio, that place is designated as the site for the town, provided no other spot should be found better adapted to the purpose, in conformity with article 34 of the provisions of the Colonization Law, and therefore, the town property still existing will be sold to the highest bidder in the manner and in the terms prescribed by Art. 2, of decree No. 177, aforesaid.

6th. The amount of the proceeds of sale of the town property aforesaid, whether in specie or in drafts payable at sight, will be delivered over to the judge, whose jurisdiction it is to preside at the sale, so that it may be paid into the treasury of the State without delay. God and liberty.

Leona Vicario, 26th May, 1834.

Signed, LETONA.

Signed, SANTIAGO DEL VALLE,
Secretary.

To the Political Chief of the Department of Bexar.

EXECUTIVE DEPARTMENT,
Free State of Coahuila and Texas.

The Commander-in-Chief of these States having communicated to the Supreme General Government all which he thought to the purpose, relative to the preference which he considers the colony of the citizen Martin de Leon entitled to as regards that of the Empresario James Power and James Hewetson, the said general government has resolved that the grants of land made to the last mentioned parties, by this same authority, on the 22d April, 1828, is understood to be applicable only to vacant lands, exclusive of lands belonging to private individuals, and that consequently Power and his partner will be put in possession of the lands so situated, and that possession will be given to the citizen Martin de Leon, of those which by his document he has proved to appertain to him; and this resolution being in conformity with the orders which I have communicated to your honor on the subject, will cause this to be duly executed, having before you the documents of both Empresarios, and being careful that the farms or habitations of private individuals found within the limits of both of them shall be respected, as the Empresarios are bound to do by their respective contracts. In case doubts should arise between the Empresarios herein referred to, relative to the limits of their contracts, and which cannot be decided by the documents they may present, your honor will form a file of the whole of the documents, and transmit them to me for final decision. Should the Mexican proprietors of the aforesaid farms or habitations not have titles to the lands they occupy, your honor will direct them to apply to the supreme authority, in conformity to the provisions of the colonization law of 24th March, 1825, presenting their petitions in form, in order that the necessary action may be had in the case. God and liberty.

Leona Vicario, 10th March, 1832.

Signed, LETONA.
Signed, SANTIAGO DEL VALLE,
Secretary.

A copy of the original, on file in the archives of this office under my charge, from which it was taken by order of his Excellency the Governor.

Monclova, 7th December, 1833.

Signed, J. MIGUEL FALEM,
Secretary.

EXECUTIVE DEPARTMENT,
Free State of Coahuila and Texas.

MOST EXCELLENT SIR:—

The Empresarios, James Power and James Hewetson, with due

submission, most respectfully represent to your Excellency that having commenced the colony contracted for by us with the supreme government of the State, with the previous approval of the supreme government of the Union, and the commissioner your Excellency has thought proper to appoint, being now here, and about to give the proper quantity of land respectively to the Irish and Mexican families, which we have introduced by virtue of our said contract, and it being the desire of sundry individuals from England, North America, and Germany, to settle in this colony in preference to other parts of the country they originally intended to go to, the permission to the supreme government is only wanting to admit them in lieu of the same number of Irish families, as proposed in the contract; they are all of industrious and good moral habits, with the further recommendation of not belonging to any nation at war with the Mexican nation. Great advantages will doubtless result to the State from granting this permission, and therefore we do not doubt that the supreme government will accede to our petition, should such be their will and pleasure; which favor we entreat.

Refugio, 2d August, 1834.

JAMES POWER,
JAMES HEWETSON.

MONCLOVA, 27*th August*, 1834.

In conformity with the solicitations of the Empresarios in the petition, the government admits all the families they propose, provided they possess all the qualifications required by law, that they do not belong to any nation at war with the Mexican Republic; and provided also, that they entered the country previous to the 12th June of the present year, upon which day the contract made with the government, of the 12th June, 1828, expired by its own limitation. A copy of this decree, and of this petition, will be given to the parties interested, in order that, on application with it to the commissioner, the object desired may be effected.

VIDAURRI.
J. ANTONIO PADILLA,
Secretary.

A copy of the original, which I certify.

J. ANTONIO PADILLA,
Secretary.

Monclova, 27th August, 1834.

Signed, J. ANTONIO PADILLA,
Secretary.

Note. All the corrections made and omissions inserted before the signing of this translation.

GEO. FISHER.

GENERAL LAND-OFFICE,
State of Texas.

I, George Fisher, Spanish Clerk of the General Land-office of the State of Texas, being sworn and bonded, do hereby certify the foregoing is a true and correct translation of the testimonies of the original documents on file in this office. City of Austin, 18th Dec'r, 1847.

GEORGE FISHER,
Spa. C'lk G'l L'd Office.

GENERAL LAND-OFFICE.
State of Texas.

I, Thomas Wm. Ward, Commissioner of the General Land-office of the State of Texas, do hereby certify that the foregoing is a true and correct translation of the testimonies of the original documents on file in this office.

In testimony whereof, I hereunto set my hand and affix the seal of the said office at the city of Austin, this 18th day of December, A. D. 1847.

THOS. WM. WARD,
Commissioner G'l L'd Office.

A. T. BURNLEY,
vs.
S. A. WHITE and others.

W. P. Ballinger, on oath, says, that as attorney for plaintiffs he instituted this suit in 1849, and soon thereafter learned that the question would be made in defence of same as to the boundary of De Leon's colony, and that the plaintiff's grant was not within the jurisdiction of said De Leon.

That affiant does not read Spanish with facility, and has never personally examined the land-office for Spanish documents relative to said colony, but that he has conversed with lawyers and others most acquainted with and interested in litigation in respect to said colony, and in the same question as to the jurisdiction; and from information obtained affiant believes that there are no documents in the land-office showing the actions of the political chief in the settlement of the boundaries of Power and Hewetson and De Leon's colonies; nor any documents showing the action of the State or General Government, if any, in the matter subsequent to the order given said political chief; nor any document showing the establishment of the boundaries of De Leon's grant by the Government; affiant has been convinced for several years past, and is now, that said documents were once in existence, but have never been archived in the Republic or State of Texas; affiant particularly remembers requesting his asso-

ciate, Judge Hughes, to examine the land-office at Austin for said documents.

W. P. BALLINGER.

Subscribed and sworn to in open Court, March 10, 1856.

JAMES LOVE,
Clerk.

Robert Hughes being sworn states, that he recollects that he was requested by Mr. Ballinger to examine the land-office for documents showing the action of the political chief in regard to the dispute between Power and Hewetson and De Leon, and showing the establishment of his boundaries of De Leon's grant by the Government; and he recollects going into the land-office at Austin and examining for himself, or procuring examination by the Spanish Clerk, and being satisfied in one mode or the other that there were no such documents in the General Land-office, and he is now satisfied that such is the fact.

ROBERT HUGHES.

Subscribed and sworn to in open Court, on 10th March, 1856.

JAMES LOVE,
Clerk.

Plaintiff then read to the Court the affidavit of William P. Ballinger and Robert Hughes, counsel for the plaintiff, for the purpose, in connection with the testimony of Mrs. Luy Esealena De Leon and José M. J. Carvajal, before introduced and read, of laying a foundation for secondary or parol evidence into the limits and bounds of the respective colonies of Power and Hewetson, and of Martin De Leon, as settled and ascertained by the political chief of Bexar under the authority of the Federal Government of Mexico, and that of the State of Coahuila, and as the said decision and action was deposed to by the witnesses, Fernando de Leon, John J. Linn, Edward Linn, and José M. J. Carvajal.

To which the defendants objected: 1. Because if the said action of the political chief at Bexar was ever had in the premises, a written memorial or report thereof, according to the laws and usages of Mexico, would have been made. 2. Because no evidence has been given showing that any such written document ever had an existence and was lost; and 3. That if such document ever existed, sufficient search thereof, in the places where the original or duplicates should be likely to exist, has not been shown to have been made. 4. That besides the archives of the colony of De Leon, of Power and Hewetson, of the records in the office of the political chief at Bexar, search should have been made at the seat of Government of the State of Coahuila and Texas, which was at Leona Vicario.

But the Court overruled the objections so made on behalf of the

defendants, and ruled that the evidence so offered established a sufficient foundation to let in the parol evidence of the witnesses, John J. Linn, Fernando de Leon, Edward Linn, and José M. J. Carvajal, before mentioned, to which decision of the Court defendants, by their counsel excepted. And thereupon the said depositions were read to the jury as follows:—

Deposition of José M. J. Carvajal.

I held the office of surveyor in Martin de Leon's colony from 1832 up to the time of the Texan Revolution. During this time there was a controversy between Martin de Leon and Power and Hewetson, as to the limits of their respective colonies. Power and Hewetson claimed all that portion of De Leon's colony between the Lavaca River on the north, and the Guadalupe and Coleto on the south, within the ten literal leagues. Power came into the disputed territory with a company of surveyors, and attempted to survey lands and exercise the rights of an Empresario some time in 1833 or 1834, I am not positive as to the date. De Leon complained to the civil authority of Victoria, which place was the capital of De Leon's colony, and that authority ejected Mr. Power and his company forcibly from the limits of the territory in dispute. Mr. Power complained to the Governor of the State of Coahuila and Texas, and the controversy was taken up to the General Government of Mexico; and the General Government decided that De Leon, having the oldest contract, should hold all the territory embraced in and claimed by him under his grant. And a special commissioner was appointed to settle the matter finally, and to put De Leon in peaceable possession of the territory claimed by him. This special commissioner was Don Ramon Muzquiz. The boundaries of De Leon's first colony had not been accurately defined, but by virtue of it the ten literal leagues which were comprehended in said grant, and occupied them from the commencement of his colony, between the Guadalupe and Lavaca Rivers, immediately on the bay. This was the territory claimed by De Leon in the controversy I have mentioned, and out of which Power and his company were ejected. The decision of the General Government awarded the right and jurisdiction of this territory to De Leon. These were not the first boundaries of De Leon's territories, for he had another grant west and adjoining the grant just mentioned. But whether the controversy between Power and De Leon involved any other territory than that mentioned above, I do not recollect. Don Ramon Muzquiz, the special commissioner, placed De Leon in the quiet possession of the disputed territory, and his decision was a final settlement of the controversy, in which Power and Hewetson acquiesced to the best of my recollection. I never heard of any further dispute about the matter. De Leon, from that time, granted lands to such settlers within the disputed territory, and his right and jurisdiction were considered as settled. In speaking of the bounda-

ries of De Leon's colony, I spoke of it being between the Lavaca on the north, and the Guadalupe and Coleto on the south. I should have said between the Lavaca on the east, and the Guadalupe and Coleto on the west, including the ten literal leagues within those limits, and following the shores of the bay. The decision of the controversy by the General Government, between Martin de Leon and Power and Hewetson, was public, and were known by the colonists, so far as I ever heard the matter discussed, and it was final between the parties.

Deposition of Edward Linn.

I recollect of a claim made by Power and Hewetson to grant the coast leagues between the Nueces and the Lavaca rivers, and a contest on the subject between them and Martin de Leon. I knew also that Martin de Leon claimed this land for the settlement of forty families under his first contract. I think the same was confirmed to said De Leon, because the State sent a commissioner to make the titles, and Power and Hewetson ceased to claim it. The decree authorizing Fernando de Leon to make the titles, was published according to custom. I know that said Power and Hewetson, and Martin de Leon were a long time contesting the right to grant this land, from the year 1830 to the settlement by the Government, to my knowledge, and perhaps before that time. I made application to Power for land lying in the fork of the Coleto and Guadalupe rivers (the same being in the ten literal leagues) for my father's headright, and he refused to grant it. It was the general opinion of the colonists that De Leon had authority from the Federal Government to grant this land, based upon the fact that he was a Mexican, and claimed authority from the Vice-President, and was in possession, as I understood, from the year 1824. It was a matter of general notoriety and public history that General Bustamente was in Victoria in 1828, and that he granted to Martin de Leon certain powers, afterwards made evident on the face of his titles. These powers were conceded to De Leon after the visit of Bustamente.

Deposition of Fernando de Leon.

The land described in the deeds [Benito Morales and others to Leonardo Manso] is a part of the land granted to the grantors in these deeds, by the witness, as a commissioner, and by a special decree of the Supreme Government of Mexico, to issue titles to the settlers on the literal leagues. Before he, as commissioner, gave the titles, the settlers on the land had documents called *amparos*, or a certificate of possession, from Martin de Leon, as judge and empressario. The families of the Literal Leagues were all Mexicans. No strangers were permitted to settle on these lands. Previous to the issuance of the title, some of them had possession of the land, but were driven off by the Carankaways. There was a dispute be-

tween Power and Hewetson, and Martin de Leon, about the right to settle these lands, from 1826 to, he thinks, 1831. There were no titles issued to these lands pending the dispute; but, upon its settlement, and the decision of the government, these titles were issued. The dispute was finally settled by the Supreme Government of Mexico, in favor of Martin de Leon.

Note.—To the admission of those depositions of Edward Linn and Fernando de Leon, which were taken at the same time and upon the same interrogatories as that of Mrs. Luy Esealena de Leon, the same objection was made as that made upon the offer by the plaintiff of her deposition; and it was further objected that said witnesses give evidence of the contents of written documents not shown to have been in existence, and to be lost or otherwise incapable of being produced. But the court overruled the objection, and the said defendants excepted to such ruling and decision of the court.

Plaintiff then offered the deposition of John J. Linn as evidence to the jury, which was objected to by the defendants, by their counsel, because the said witness swears to the contents of written documents, the existence of which is not otherwise proved, and there is no proof of loss, there being better evidence, to wit, the production of the documents themselves. But the court overruled the objection, and permitted the said deposition to be read to the jury, to which ruling and decision of the court the defendants by their counsel excepted; and thereupon the deposition was read as follows:—

Deposition of John J. Linn.

I have lived in Texas nearly twenty-two years. I have all the time resided in Victoria County. A controversy arose between Power and Hewetson and de Leon in relation to their grants, from the fact that Power and Hewetson claimed that their grant extended eastward to the mouth of the Lavaca River. De Leon claimed that his grant embraced all that district lying between the Guadalupe and Lavaca Rivers from the bay shore as far up as the "old Nacogdoches road," so called. Power and Hewetson did not claim so high up. They only claimed ten Mexican leagues up the Lavaca River; the dispute or controversy was concerning lands lying between the mouths of the Guadalupe and Lavaca Rivers. The matter in difference was presented to the Government of Mexico for settlement. The General Government acted on the matter and referred it to the Government of Coahuila and Texas with instructions, and in pursuance of such instructions the Political Chief was directed to lay off and designate the boundaries of the respective grants, which was so done, and all that district lying between the Guadalupe and Lavaca Rivers from the bay up to the "old Nacogdoches road" was declared to be within De Leon's colony; and that west of Guadalupe to be within Power and Hewetson's colony; and after the dispute was thus determined, Power and Hewetson and De Leon extended titles to settlers on the respective grants as empresarios. They commenced so

to do very shortly after the boundaries were designated by the Political Chief as before stated, and the following year surveying was diligently prosecuted. The jurisdiction of De Leon was claimed to be over the district between the Guadalupe and Lavaca Rivers, and it was so determined by the Political Chief. He did not claim merely to the extent of the land occupied by settlers, but claimed the whole, and the decision of the General Government went to that extent. I do not know that I ever read any of the decrees, but I heard some of them read. It is my impression that the archives of De Leon's colony were returned to the Government of Texas, at Austin, about three years ago by Fernando de Leon; he had them in his possession, and took care of them during the revolution. Some of the titles were, I believe, destroyed, but most of the archives were returned as above stated. The controversy before spoken of between Power and Hewetson and De Leon commenced in 1831, and was determined in the fall of 1832, or spring of 1833. It was a matter of notoriety and general understanding that the action taken by the Political Chief, as before stated, was a final and conclusive settlement of the controversy. I had, some time after, frequent conversations with Mr. Power in relation to the matter, and I know he considered it, and acquiesced in it as the final and conclusive action of the Government in the premises. The only objection that Col. Power seemed to have to the adjustment of the controversy as it was, that by it that District lying between the Coleto and Guadalupe was cut off from him and given to De Leon.

Plaintiff then put in evidence before the jury a copy of a printed map of Texas, purporting to have been compiled by Stephen F. Austin, to prove public reputation as to the limits of De Leon's colony, which was objected to by the defendants on the ground that the fact might not be proved by general reputation, but the Court overruled the objection and allowed the said map to go to the jury, to which ruling and decision of the Court the defendants by their counsel excepted.

Plaintiff also offered in evidence before the jury the deposition of Edward Linn, Surveyor of Victoria District, taken by defendants, which was read as follows:—

Deposition of Edward Linn.

THE UNITED STATES OF AMERICA,
District of Texas.

STATE OF TEXAS,
County of Victoria.

Be it remembered, that on this sixth day of February, in the year of our Lord one thousand eight hundred and fifty-six, I, James Ingram, a Commissioner duly appointed by the District Court of the United States for the District of Texas aforesaid, under and by vir-

tue of an act of Congress of the said United States, entitled "An act for the more convenient taking of bail and affidavits in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the act of the said Congress, entitled "An act in addition to an act entitled an act for the more convenient taking of bail and affidavits in civil causes depending in the Courts of the United States, passed March 1st, 1817, and an act of the said Congress, entitled "An act to establish the Judicial Courts of the United States," passed September 4th, 1787, [illegible] at the request of S. A. White and William M. Cook, defendants, call and cause to be and personally appear before me, at Victoria, in the said District and State of Texas, Edward Linn, to testify and the truth to say on the part of the defendants, in a certain cause or suit now depending and undetermined in the District Court at Galveston in the said State of Texas, wherein Levi Jones and Albert T. Burnley are plaintiffs, and Saml. A. White and Wm. M. Cook defendants. And the said being of sound mind and lawful age, and having been by me cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause or suit aforesaid, was conformably examined by me, and he did thereupon depose, testify, and say as follows, that is to say :—

I am acquainted with the parties, plaintiffs and defendants. I am the legal surveyor of the Victoria Land-district since 1838 to 1840, and from the year 1847 to the present time. My first commission was April, 1838, to 1840. My second from 1847 to this date. I know of no entry of A. M. Gwatney, certificate 990, earlier than January 5th, 1847. I do not know of any understanding about the location and survey of said land certificate—at least with myself. There was always an entry-book kept in the Surveyor's office from the opening of the General Land-office, in which all applications for entry were recorded. It was customary for persons to give verbal instructions, so that the surveyor could make the entry. The applicant would make his application in writing, so that the surveyor could file the application and record it.

I have held the office for eleven years, and have not received an entry that I have not placed on the record-book, with the exception of such as I have received in the woods, and surveyed forthwith. The parties making such locations ran no risk of losing their locations. During my term in office there were no papers lost, rendering re-locations and surveys necessary.

EDWARD LINN.

Cross-interrogatories.

The location of the land-warrant No. 990, was dated January 5th, 1847, a full copy of which is appended to these depositions, being A. M. Gwatney certificate. There was no survey made under the Gwatney certificate, but a survey was made under a location No. 429,

of land-warrant No. 5,072, issued to James A Wells, for one hundred and seventy-nine and a half acres, on the 15th day of May, 1850, and afterwards transferred or altered to the Gwatney certificate, January 13th, 1851. There are no other locations of the Gwatney certificate but the one above stated, but there appears to be a survey transferred to said certificate 1846, and made on the flats in Matagorda Bay, between the shore and the channel, and in front of the surveys of F. de Leon, Benito Morales, and Juan Caño, the location of which was made under a different certificate, No. 936, issued by the Board of Land Commissioners of Harris County to Tho. C. Delano. The entries made by S. A. White and William M. Cook were placed on my entry-book, but I find three surveys conflicting with the lands of F. de Leon, and B. Morales and others, for which I find no entries. There have been no entries lost since I have had charge of the office. The certificate of D. N. White was located on the 17th September, 1841, on the south side of Powderhorn Bayou and lake, on the land in the name of Juan Caño. The certificate of D. N. White was not surveyed upon the land expressed in the location, but in two different parcels; surveys made February, 1842. The first connected map of the surveys made in Victoria District was made by me, and deposited in the General Land-office in 1838. The headright leagues of Leanardo Manso, Juan Caño and Benito Morales, with all the lands titled by De Leon as commissioner, was laid down on said map, and designated by the owner's name. I know Juan Caño and Leanardo Manso very well; Morales I do not recollect so well. Manso was a prominent person. I knew them in Victoria. Caño and Manso lived first in Victoria, afterwards on the west side of the Lavaca River. They were all, viz. Manso, Caño, and Morales, colonists in the colony of Martin de Leon. They came to the colony in the year 1831 or 1832, when Manso and Caño settled in the Lavaca, in the latter part of 1833 or the beginning of the year 1834. S. A. White and William M. Cook both made locations of certificates on the headright leagues of Juan Caño and Benito Morales, as shown by the map hereto appended. When White and Cook made their locations in said headright, they both knew of the colonial titles to said lands, and S. A. White particularly, and also knew that there were other claimants to said headright lands. I knew S. A. White living at Indian Point in the year 1842, and on the land of F. de Leon, the title to which was extended to F. de Leon, as will be seen in the map appended hereto. To the best of my knowledge, S. A. White now lives in the Caño or Morales League, nor had he, or any person under him, any improvement to my knowledge, but I know that J. H. Beck, in 1842, was cultivating a tract of some ten acres or more in 1842, partially cleared in chapparal, which was used for fencing against stock. S. A. White had no connected continuous locations from his residence to the improvement, cultivated by J. H. Beck. S. A. White and Wm. M. Cook claimed adversely to each other the right to the loca-

tion at Powder-horn. They claimed adversely upon the D. N. White and Gwatney certificates. Subsequently to the survey made for Cook at Powder-horn in 1850, I append hereto also copies of all the locations and surveys made for either of the defendants, on the colonist headrights of both Juan Caño and Benito Morales, so far as I find them on record in my office, and numbered from one to 14 by the commissioner.

EDWARD LINN.

And I, James Ingram, the commissioner aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material and necessary in the said cause or suit in the caption of the said deposition named. And that he lives in Victoria County, State of Texas, more than one hundred miles from the place where the trial of the said suit is to be had, to wit, Galveston, State of Texas.

I further certify that a notification of the time and place of taking the said deposition was served upon the attorney for the plaintiff as per agreement (which notification was made by D. N. Stapp and certified to me under oath), by which notification the said plaintiffs, through their attorney, was advised to be present at the taking of said deposition, and to put interrogatories if they thought fit.

I further certify that on the day and year first above mentioned I was attended by the said witness, Edward Linn, and thereupon the above deposition was taken and reduced to writing by me, in the presence of the said witness, and from his statements, and after carefully reading the same to the said witness, he subscribed his name thereto, as also to the cross-interrogatories and copies appended, as numbered from one to 14 as within written.

I have retained the said depositions and certified copies made out and signed by the said witness, Edward Linn, District Surveyor of the Victoria District, for the purpose of sealing up and directing the same to the Clerk of the Court for which the same was taken, to be forwarded by mail from the post-office, at Victoria, Texas.

And I further certify that I am not of counsel or attorney for either of the parties in the said depositions or caption named, nor in any way interested in the event of said cause or suit.

[SEAL.] Witness my hand and private seal, as Commissioner, at Victoria, Texas, the day and year above written.

JAMES INGRAM,
U. S. Commissioner.

STATE OF TEXAS,
County of Victoria.

Survey of 320 acres of land for David N. White, situated on the west side of Matagorda Bay, in the county of Victoria, it being the quantity of land to which he is entitled by virtue of land warrant

No. 3543, issued to the said D. N. White, by the Secretary of War, and dated at Houston, the 24th day of May, 1838.

Beginning at a post on the margin of the bay, 1100 vs. from the mouth of Powderhorn Bayou. Thence N. 56° W., with the meanders of the bay, at 1350 vs., a post from which a lignum vitæ 6 inches in dia., marked +, bears S. 45° W., 105 varas. Thence S. 45° W., at 795 vs. a bayou 50 vs. wide; at 1325 varas, a post in the prairie. Thence S. 45° E., at 700 vs. a post in the prairie. Thence N. 85° E., 865 vs. a post in the salt marsh of Powderhorn Lake. Thence N. 45° E., at 130 vs. a bayou 100 vs. wide, at 1000 vs. the place of beginning.

Feb'ry, 1842.

CHAS. M. CREANER,
County Surveyor, V. C.

D. N. WHITE,
W. F. WHITE,
Chain Carriers.

I, Charles M. Creaner, declare under the oath of my office, that the foregoing survey was made according to law, and that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the above plat and field-notes.

CHAS. N. CREANER,
County Surveyor, V. C.

Recorded May 1st, 1849.

I hereby certify the within field-notes of the survey made for David N. White, to be a true copy of the same, taken from book B, No. 1, of the records of my office.

Given under my hand, at Victoria, this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria County.

No. 2.
JAMES INGRAM, *Commissioner.*

STATE OF TEXAS,
County of Victoria.

Survey for Wm. M. Cook, of 179½ acres of land, situated on the S. W. side of Matagorda Bay, and on the north margin of Powderhorn Bayou, about three miles southeast from the town of Indianola, county of Calhoun, district of Victoria, it being part of the quantity of land to which he is entitled by virtue of land warrant No. 990, dated at Houston, Dec'r 13th, 1837, issued to Abraham N. Gwatney, and by him transferred to said Cook.

Beginning at a stake 1,100 vs. from the mouth of Powderhorn

Bayou, from which a double palmetto, which stands in the south end of the south mat (one of three mats), bears S. 32° 45′ W., and the north end of the north mat bears S. 47 W.; thence down the bay with its meanders S. 32° E., 952 vs.; S. 35° E., 57 vs., to the mouth of Powderhorn Bayou, a post from which the north point of Powderhorn Bayou bears N. 23 E., 63 vs., and the N. W. end of Brown's wharf bears N. 36° 25′ E., about 630 vs.; thence up the bayou with its meanders S. 0° 45′ W., 114 vs.; S. 83° 30′ W. 141 vs.; S. 76° 15′ W., 410 vs.; S. 37° 15′ W., 290 vs., to Powderhorn or Fish Lake, a post; thence, following the lake, N. 48° W., 80 vs.; S. 62° W., 205 vs.; N. 83° 15′ W., through Salt Marsh, 605 vs.; N. 24° E., 485 vs., to the mouth of bayou, runs N. W.; thence with the bayou N. 17° E., 325 varas, to bank of bayou, a post from which the south end of north mat bears S. 45° W., 300 varas; thence N. 45 E., 600 varas, to the place of beginning.

Surveyed May 15th, 1850.

EDWARD LINN,
District Surveyor, Victoria District.

PHILIP ECHELBACK,
MARTIN SIGMUND,
Chainmen.

Recorded January 13th, 1851.

I certify that the foregoing field-notes of the survey made for William M. Cook to be a true copy of the same, taken from book B, No. 1, of the records of my office.

Given under my hand, at Victoria, this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 3.

JAMES INGRAM, *Commissioner.*

STATE OF TEXAS,
County of Victoria.

Survey, for James A. Wells, of 179½ acres of land situated on the S. W. side of Matagorda Bay, and on the north margin of Powderhorn Bayou, about 3 miles S.E. from the town of Indianola, county of Calhoun, and district of Victoria, it being part of the quantity to which he is entitled by virtue of land-warrant No. 5,072, dated at Houston, Dec'r 13th, 1838, and issued to James A. Wells.

Beginning at a stake 1,100 varas from the mouth of Powderhorn Bayou, from which a double palmetto, which stands in the south end of the south mat (one of three mats), bears 32° 45′ W., and the north end of the north mat bears S. 47 W.; thence down the bay with its meanders S. 52° E., 953 varas; S. 35° E., 157 vs., to the mouth of Powderhorn Bayou, a post from which the north point of

Powderhorn Bayou bears N. 23° E., 63 vs., and the N. W. end of Brown's wharf bears N. 36° 15′ E., about 630 vs.; thence up the bayou with its meanders S. 0° 45′ W., 114 varas; S. 83° 30′ W., 141 vs.; S. 74° 15′ W., 410 vs.; S. 37° 15′ W., 295 vs., to Powderhorn or Fish Lake, a post; thence, following the lake, N. 48° W., 80 vs.; S. 62° W., 205 vs.; N. 24 E., 485 vs., to the mouth of the bayou, runs N. W.; thence, with the bayou, N. 17° E., 325 vs., to bank of bayou, a post from which the south end of north mat bears S. 45° W., 300 vs.; thence N. 45 E., 600 varas, to the place of beginning.

Surveyed May 15th, 1850.

EDWARD LINN,
District Surveyor, Victoria District.

PHILIP ECHELBACK,
MARTIN SIGMUND,
Chainmen.

Recorded May 29, 1850.

The foregoing field-notes altered to L. W. 990, transferred to William M. Cook.

I hereby certify that the foregoing field-notes of the survey made for James A. Wells to be a true copy of the same, taken from book B, No. 1, of the records of my office.

And given under my hand, at Victoria, this 6th day of Feb'y, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 4.

JAMES INGRAM, *Commissioner.*

STATE OF TEXAS,
District of Victoria.

Survey of 640 acres of land for Fielding Jones, situated on the west side of Matagorda Bay, immediately below Indian Point, county of Calhoun, district of Victoria, it being the quantity of land to which he is entitled by virtue of certificate No. 5, class 2d, issued by the Board of Land Commissioners for the county of Victoria.

Beginning at the north corner of a survey of 640 acres made for Thomas Wilson, a stake on the bay shore, from which a lignum vitæ tree, 3 inches in dia., bears S. 85 W., 88 vs.

Thence S. 45° W., with Wilson's N. W. boundary, 3871.6 vs., to a stake in the prairie.

Thence N. 45 W., 950 vs. to the S. E. boundary of a survey made for S. A. White, a stake in prairie.

Thence N. 45 E., with White's S. E. boundary, 4031.6 vs., to White's east corner, a stake, from which a stake marked *W*, bears

S. 45 W., 36 vs. and the east corner of Huck's house bears N. 85° 30′ W., 27 varas.

Thence down the bay with its meanders to the place of beginning. Surveyed June 25th, 1849.

A. H. FRY,
PETER NELSON,
Chainmen.

I, S. A. White, declare that the foregoing survey was made according to law, and that the limits, boundaries and corners, with the marks, natural and artificial, are truly described in the above plat and field notes, and the survey made June 25th, 1849.

S. A. WHITE,
Deputy Surveyor, Victoria District.

I certify that I have examined the foregoing plat and field-notes, and find them correct, and the survey made according to law.

EDWARD LINN,
D. Sur., Victoria District.

I hereby certify that the within field-notes are a true copy of the survey made for Fielding Jones, and taken from book B, No. 1, of the records of my office.

And given under my hand, at Victoria, this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 5.

JAMES INGRAM,
Commissioner.

STATE OF TEXAS,
District of Victoria.

Survey for Samuel A. White of one-third of a league of land, situated on the S. W. side of Matagorda Bay, in the county of Victoria, it being the quantity of land to which he is entitled by virtue of certificate No. 37, issued by the Board of Land Commissioners for the county of Jackson.

Beginning at the north corner of a survey made for Fielding Jones, a post on the margin of the bay, from which a lignum vitæ tree 7 in. diam., marked *T. W.* bears S. 45° W. 40 vs.

Thence up the bay, with its meanders, N. 35° W. 500 vs. N. 23° W. 300 vs. N. 9° W. 700 vs. N. 26° W. at 131 varas, a post from which a forked lignum vitæ tree 6 inches diam., marked *H.*, bears S. 16 W. 53 vs., and a lignum vitæ 10 in. diam., marked *A.*, bears S. 16° W. 65 vs.

Thence S. 45° W. at 830 vs. a high ridge with timber on it, 1050 a marsh, at 4870 vs., a bayou full of rushes, bearing N. W., at 6100 vs. a post in the prairie.

Thence S. 45° E. at 1444 vs. a post from which a grove bears S. 27° E., and another grove bears S. 25° E.

Thence N. 45° E., at 2600 vs. Rush Lake, at 2820 varas a bayou 10 vs. wide, at 5080 vs. a high ridge, at 5444, the place of beginning.

The above survey contains 8⅓ labors of pasture land.

CHAS. M. CRAMER,
County Surveyor, V. C.

W. T. WHITE,
D. N. WHITE,
Chain Carriers.

Surveyed Feb'y, 1842.

I hereby certify the within to be a true copy of the field-notes of S. A. White, taken from book B, No. 1, of the records of my office.

Given under my hand, at Victoria, this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 6.

JAMES INGRAM,
Commissioner.

STATE OF TEXAS,
District of Victoria.

Survey of one-third of a league of land, for Jose Maria Manchaca, situated on the west side of Lavaca Bay, about 2 miles above Indian Point Bar, in the county of Victoria, it being the quantity of land to which he is entitled by virtue of certificate No. 60, issued by the Board of Land Commissioners for the county of Goliad.

Beginning at the north corner of a survey made for George H. Hall, a post from which a lignum vitæ tree marked + bears S. 34° W. 39 varas.

Thence up the bay, with its meanders, N. 64 W. 345 vs., a bayou 390 vs. N. 61 W. 450 vs. N. 32° W. 250 vs. N. 64 W. 370 vs., a post on the bay shore, from which Gallinipper Point bears N. 43 W., and Louisville Point bears N. 36½ W.

Thence S. 45° W. at 5566 vs., a post in the prairie.

Thence S. 45° E. 1444 varas, a post in the prairie.

Thence S. 45 E. at 5570 vs. a bayou or lake, at 5976 vs., the place of beginning.

D. N. WHITE,
F. M. WHITE,
Chain Carriers.

I, Charles M. Craener, do solemnly declare, under the oath of my office, that the foregoing survey was made according to law, and

that the limits, boundaries, and corners, with the marks natural and artificial, are truly described in the above plat and field-notes.

February, 1842.

CHAS. M. CREANER,
County Surveyor, Victoria County.

Recorded January 30, 1849.

I certify that the foregoing to be a true copy of the field-notes of a survey made for José Maria Mancha, and taken from Book B, No. 1, of the records of my office.

And given under my hand at Victoria, this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 7.

JAMES INGRAM, *Commissioner.*

STATE OF TEXAS,
District of Victoria.

Survey for George H. Hall, for one-third of a league of land, situated on the west side of Lavaca Bay, in the county of Victoria, and about one mile above Indian Point Bar, it being the quantity of land to which he is entitled by virtue of certificate No. 95, issued by the Board of Land Commissioners for the county of Jackson.

Beginning at the north corner of a survey of one-third of a league of land, made for S. A. White, a post, from which a lignum-vitæ tree, 10 inches in diam., marked A, bears S. 11° W. 65 vs., and a forked lignum-vitæ tree, 6 in. in dia., marked H, bears S. 16° W. 53 varas.

Thence up the bay with its meanders, N. 47° W. 180 varas; N. 45° W. 220 vs.; N. 69° W. 900 vs.; N. 64° W. 240 vs., a post, from which a lignum vitæ, marked +, bearing S. 34° W. 39 vs.

Thence S. 45° W. at 190 vs., a lake; at 5556, a post in the prairie.

Thence S. 45° E., at 1444 vs., a post in the prairie.

Thence N. 45° E., at 5996, the place of beginning. The above survey contains 8¼ labors of pasture-land.

C. M. CREANER,
County Surveyor.

D. N. WHITE,
F. W. WHITE,
Chain Carriers.

Feb'y, 1842.

I, Charles M. Creaner, declare, under the oath of my office, that the foregoing survey was made according to law, and that the limits,

boundaries, and corners, with the marks natural and artificial, are truly described in the above plat and field-notes.

CHAS. M. CREANER,
County Surveyor, Victoria County.

Recorded Jan'y 30, 1849.

I hereby certify that the within field-notes to be a true copy of the survey made for George H. Hall, and taken from Book B, No. 1, of the records of my office.

Given under my hand at Victoria, this 6th day of Feb'y, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 8.

JAMES INGRAM, *Commissioner.*

STATE OF TEXAS,
County of Victoria.

Survey of 640 acres of land for Thomas Wilson, situated on the S. W. side of Matagorda Bay, in the county of Victoria, it being the quantity of land to which he is entitled by virtue of land warrant No. 1410, dated at Houston, 29th Dec., 1837.

Beginning at the north corner of a survey for John T. Dillon, a post, from which a lignum-vitæ, 3 in. diam., marked X, bears S. 45° W. 80 vs. Thence up the bay with its meanders N. 43° W. 700 varas; N. 22° W. at 306 vs., the east corner of a survey made for Fielding Jones, a post from which, a lignum-vitæ tree, 7 in. dia., marked X, bears S. 82 W. 88 vs. Thence S. 45 W. with said Jones' survey, at 3,754 vs., a post in Jones' S. E. boundary line. Thence S. 45° E. 981 vs., a post on the N. W. boundary line of a survey made for J. T. Dillon. Thence N. 45° E. with said Dillon's line, 3,610 vs. to the place of beginning.

CHARLES FRAZER,
DIEGO INCARNACION,
Chainmen.

I certify, under my oath of office, that the foregoing survey was made according to law, and that the limits, boundaries, and corners, with marks natural and artificial, are truly described in the above plat and field-notes.

I hereby certify that the foregoing to be a true copy of the foregoing field-notes, taken from Book B, No. 1, of records of my office.

Given under my hand at Victoria, this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria Dist.

No. 9.

JAMES INGRAM, *Commissioner.*

STATE OF TEXAS,
District of Victoria.

Survey for Abram N. Gwatney, of 640 acres of land, situated on the S. W. side of Matagorda Bay, in the county of Victoria, it being a part of the land to which he is entitled by virtue of land warrant No. 990, dated at Houston, 19th Dec'r, 1847.

Beginning at a post on the edge of the first bayou above Indian Point. Thence N. 45° E. at 500 vs., a post in the water. Thence S. 63° E. at 1700 vs., a post near the ship channel. Thence S. 25 E. 3000 varas, to a post in the water. Thence S. 45 W. 510 vs., to the N. E. boundary of a survey made for S. A. White. Thence N. 45° W. with said White's survey at 530 varas, the east corner of a survey made for John T. Dillon. Thence N. 60 W. with said Dillon's survey 600 vs.; N. 48° W. 420 vrs. his north corner and east corner of a survey made for Thomas Wilson. Thence N. 43° W. with Wilson's survey 700 vrs.; N. 22 W. at 306 vs., Wilson's north corner, and the east corner of a survey made for Fielding Jones. Thence N. 25° W. with Jones' survey at 1048 vs., his north corner and the east corner of a survey made for S. A. White. Thence N. 33 W. with said White's survey 600 vs.; N. 23 W., 300 vs.; N. 7 W., 700 vs.; N. 26 W. at 100 vs., his north corner and east corner of a survey made for D. N. White. Thence N. 26 W. with said D. N. White's survey 210 vs.; N. 47 W. 120 vs.; N. 66 W. 300 vs.; N. 69 W., 900 vs.; N. 64 W. at 520 vs., the place of beginning.

CHARLES FRAZER.
DIEGO INCARNACION,
Chainmen.

I certify under the oath of my office that the foregoing survey was made according to law, and that the limits, boundaries and corners, with the marks natural and artificial are truly described in the above plat and field-notes.

I hereby certify that the foregoing to be a true copy of the foregoing field-notes taken from the Record Book B, No. 1, of my office.

Given at Victoria, this the 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 10.
JAMES INGRAM,
Commissioner.

STATE OF TEXAS,
District of Victoria.

Location No. 251.

S. Addison White locates certificate No. 5, 2d class issued by the board of land commissioners for the county of Victoria to Fielding Jones, for 640 acres on the west side of Matagorda Bay, at a point opposite or against Indian Point Bar, running down the bay and back for quantity at low tide.

Also land warrant No. 3543 for 320 acres issued to David N. White, on the west side of Matagorda Bay fronting on the water at low tide, and on the south side of Powder-horn Bayou and Lake following same. September 17th, 1841.

I hereby certify that the foregoing location to be a true copy of the same, taken from the entry book of my office, and given at Victoria this 6th day of February, 1856.

EDWARD LINN.
District Surveyor, Victoria District.

No. 11.
JAMES INGRAM,
Commissioner.

STATE OF TEXAS,
District of Victoria.

Location No. 308.

AUGUST 13th, 1845.

William M. Cook locates 836 acres of land, by virtue of certificate No. 936, issued by Thomas C. Delano by the Board of Land Commissioners of Harris County.

To begin at the N. E. or upper corner of a survey made for S. A. White, on the bay shore of Lavaca Bay. Thence in N. eastwardly direction to channel in said bay. Thence with said channel, and said White's N. E. boundary line, so as to include all the flat of land lying in front and between said White's survey and said channel. Thence with said White's survey down to the lower or S. W. corner of said survey. Thence with the meanders of said bay shore, and back to said channel, so as to include the flats to the channel in front of Fielding Jones' 640 acres survey. Thence with said bay shore so as to include the beach, and to the channel down with the meanders of said bay shore to Powder-horn Bayou. Being the flats from the bay shore N. E. to the channel so as to include all the flats in front of the several surveys, from the said upper N. E. corner of said White's survey, down to Powder-horn Bayou.

I hereby certify that the foregoing to be a true copy of the afore-

said location, taken from the entry book of my office, and given at Victoria this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 12.
JAMES INGRAM,
Commissioner.

STATE OF TEXAS,
District of Victoria.

Location No. 339.

INDIAN POINT, *Jan'y 5th*, 1847.

To the County Surveyor of Victoria County:—

Will please survey 320 acres of land on bounty warrant No. 990, on Matagorda Bay, at the mouth of Powderhorn Bayou, commencing at the mouth of Powderhorn Bayou, on the N. W. side, thence up the bay and back for quantity.

WM. M. COOK.

I hereby certify that the above entry to be a true copy, taken from the entry book of my office, and do further certify that there is an error in the date of the year, which should be 1848 in lieu of 1847.

Given under my hand at Victoria, this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 13.
JAMES INGRAM,
Commissioner.

STATE OF TEXAS,
District of Victoria.

Location No. 429.

SEPTEMBER 12th, 1849.

William M. Cook locates land warrant No. 5072, issued to James A. Wells, for 320 acres of land, commencing at the east corner of a survey made for D. N. White, on the S. W. side of Matagorda Bay, thence down the bay to Powderhorn Bayou, and back for quantity.

I hereby certify that the foregoing to be a true copy of location No. 429, and taken from the entry book of my office, and given at Victoria, this 6th day of February, 1856.

EDWARD LINN,
Deputy Surveyor, Victoria District.

No. 14.
JAMES INGRAM,
Commissioner.

And also copy of map accompanying said deposition, which is as follows:—

(Map, page 226.)

I hereby certify that the above plat to be a true copy of a map made by the undersigned for the Gen'l Land-office, in the early part of the year 1838, so far as it relates to the colonial surveys, which are marked with blue. Also showing a conflict of the subsequent locations and surveys with the same, marked with red.

Given at Victoria, this 6th day of February, 1856.

EDWARD LINN,
District Surveyor, Victoria District.

No. 1.

Signed and acknowledged before me by Edward Linn, District Surveyor, Victoria District.

JAMES INGRAM,
Com'r.

Plaintiff then offered in evidence the depositions of Fernando De Leon, and Mrs. Margaret T. Wright, taken by the defendants in this suit *de bene esse* under the act of Congress, to the introduction of which by the plaintiff the defendants by their counsel objected, on the ground that the plaintiff, not having cross-examined the witnesses, had no interest in the depositions, and had no right to use the same as evidence, but the Court overruled the objection and permitted the said depositions to be read, to which ruling and decision of the Court, the defendants by their counsel excepted, and the said depositions were read, as follows:—

Deposition of Fernando de Leon.

States that he was well acquainted with Leonardo Manso; he was in De Leon's colony; he was a Spanish Mexican. He was trading to Louisiana. He had a rancho in Lavaca County. During the war of 1836, he was in Opelousas, Louisiana. Knows that Leonardo Manso never returned to Victoria, Texas, but resided in Matamoras, after the war in 1836.

Deposition of Mrs. Margaret T. Wright.

States, I have been acquainted with L. Manso. I got acquainted with him in the year 1835, at Victoria, where he stopped a short time. He was then on his way to Eastern Texas, with stock to sell or trade. He was ordered to leave Mexico, on account of his being a Gauchapin, or in other words, a foreigner. He had his family with him, as also his *peons* or servants. After leaving Victoria, he with his family and servants, proceeded to the State of Louisiana. I saw him in Louisiana, in the year 1836 *in the year* 1836, when I visited

of the one part, and Levi Jones of the other part, witnesseth, That whereas the said Jones and others are the *bona fide* proprietors of certain lands near Indian Point, in the western part of the bay of Matagorda, in the county aforesaid, originally granted by the State of Coahuila and Texas to Benito Morales and Juan Caño as colonists, and which, with the description and boundaries may be found more fully set forth in the records filed in the General Land-office, at Austin, and in the Clerk's Office of the county of Victoria, aforesaid, upon which, or a part of which the said Jones and others contemplated laying off a town, with a view to the sale of lots therein at some early day hereafter.

And whereas, the said White has heretofore rendered service to the interests of said Jones and others, by inviting attention to and settlements upon some of the said lands, under the mistaken impression that they might have been vacant lands or public domain, belonging to the Republic of Texas, and consequently belonging to the said White himself, under certain locations made by and for himself, under the General Land Law of 1837, and under this impression also, he the said White sold a part of what he deemed his right under locations and surveys aforesaid, viz: Twelve hundred acres of land, and conveyed it by deed, bearing date the 11th day of August, 1845, to said Howth, for a valuable consideration, in property, of the value of about two thousand dollars, and whereas, all the parties hereto concurring fully in the belief of the fact, and acknowledging fully that the said lands, as bounded and described in the original grants to said Benito Morales and Juan Caño, which are now filed in the General Land-office of Texas, belonged in full right to the said Jones and others, at the time of White's location and survey aforesaid. And of his said conveyance to the said Howth.

Now, therefore, the said White and Howth declare themselves ready to relinquish, and they do hereby bind themselves to relinquish and transfer to the said Jones all the right, title, interest, claim, or possession which they or either of them have at this time, or ever had or held in and to all or any of the lands aforesaid by virtue of any location, survey, or conveyance from any authority or persons whatever, immediately upon his said Jones's agreeing, as he hereby binds himself and does agree that he shall pay to the said Howth the sum of two thousand dollars, with legal *with legal* interest from the date hereof, and of the first proceeds of the sales of lots in the town as proposed to be laid off near Indian Point, and the said Howth agrees and binds himself to accept the said sum of two thousand dollars with interest as aforesaid, in full compensation as indemnity for the valuable consideration paid by him to the said White, as expressed in the deed hereinbefore mentioned, from said White to said Howth, dated 11th day of August, 1845, and if the said town should not be laid off in time to furnish proceeds sooner than the close of the year 1846, said Jones hereby binds himself to pay the said sum from his own

resources. And the parties hereto mutually bind themselves, their heirs, executors, administrators, and assigns to the faithful performance of all the stipulations of this agreement.

In witness whereof the parties have hereunto set their hands and affixed their seals (scrolls) in duplicate, in the town of Victoria, the day and year first above written.

LEVI JONES. [SEAL.]
S. A. WHITE. [SEAL.]
W. E. HOWTH. [SEAL.]

In presence of witnesses,

JAMES INGRAM,
THOMAS NEWCOMB.

REPUBLIC OF TEXAS,
County of Victoria.

Before me, James Ingram, Clerk of Victoria County, personally appeared Levi Jones, S. A. White, and W. E. Howth, parties to the foregoing agreement, who signed and acknowledged the foregoing instrument in duplicate, in my presence, for the purposes therein specified, acknowledging the same to be their free act and deed, to the end that the same might be recorded as such according to law.

In testimony whereof I have hereunto set my hand and [SEAL.] seal of the County Court in office at Victoria, this 15th day of October, 1845.

JAMES INGRAM,
Clerk.

Filed and rec'd 15th Oct., 1845.

STATE OF TEXAS,
County of Victoria.

I, G. Wm. Garnett, Clerk of the County Court in and for said county, do hereby certify that the foregoing to which this certificate is attached is a true and correct transcript from the record of deeds, volume the 2d, pages 230 and 231, as the same appears in said record on file in my office.

G. WM. GARNETT,
C. C. V. C.

Plaintiff then called Joseph F. Smith, who being duly sworn said:

Testimony of Joseph F. Smith.

He has known Fielding Jones since 1839 or 1840, who has during all that time resided and now resides in Victoria County. He is now Judge of the District Court, and from reputation he is a brother of Levi Jones. He is a lawyer, and practised as such until he was made judge. I do not know about his knowledge of law relating to land

titles. I examined a map of Victoria County, in the County Surveyor's office, at Victoria, in 1838. The map was made by Mr. Kerr, and I do not know that it was a county map of Victoria County. The map showed surveys on the coast between Guadalupe and Lavaca Rivers. I first saw White when he lived on the Lavaca River, and from reputation he had been a surveyor in Power and Hewetson's colony.

Cross-examined.

Said Carvajal married Martin de Leon's sister. There were no grants or titles in the county office at Victoria to support the map I saw there.

The plaintiff here closed his evidence in rebuttal, and the foregoing contain the evidence in the cause on both sides.

The testimony having here closed, the defendants by their counsel moved the Court to strike out all the testimony of José M. J. Carvajal, John J. Linn, Edward Linn, and Fernando de Leon, as to any writings, documents, or decrees relative to the controversy between Power and Hewetson, on the one part, and Martin de Leon on the other, and especially as to the action of the Political Chief of Bexar, on the subject, for the following reasons:—

1. Because no particular paper, writing, document, or decree has been identified, and its existence at any time shown.

2. Because the loss or destruction of any particular paper, writing, or document, has not been shown.

3. Because the testimony given by said witnesses in relation to the subject is vague, uncertain, and illegal.

4. Because, as evidently appears from their testimony, the said witnesses only state their own conclusions from, and the effect of writings, documents, and decrees in evidence herein; the contents of which have been misunderstood, or imperfectly recollected, and from facts not proven, and not known to themselves.

Which motion was overruled by the Court, and thereupon the defendants by their counsel excepted to the said ruling and decision of the Court.

The case having been argued before the jury by the counsel for both parties, upon the prayer of the counsel for the plaintiff, the Court instructed the jury as follows:—

1st. That at the date of the grant under which plaintiff claims, both by the general law and the colonization law, Saline Bays, extending from the gulf or the large bays, could not properly be included in a grant to a colonist, such bays, though embraced in the lines of the survey, would properly have been deducted from the computation of the area of the grant, and the plaintiff's grant on its face is not invalid on that account.

2d. The statement made in the survey contained in plaintiff's grant,

that half of the survey was covered with Saline Bays, is *prima facie* to be taken as true *at that time.*

3d. Any change which may have taken place since in the country included in the lines of the survey, will not affect the validity of the grant.

4th. Although the jury should believe that the grant when surveyed did not contain an entire league covered by saline bays, yet if they believe that the statement in the survey was caused by the mistake or neglect of the surveyor, it will not vitiate the grant; and in order to render the grant invalid on this ground, the jury must believe from the evidence that there was intentional fraud committed by Benito Morales, the grantee.

5th. [Erased.]

6th. That the burden of proof to show fraud is upon the defendants' presumptions being in favor of the correctness of the acts of the officer, and of the good faith of the parties.

7th. That if the jury believe from the evidence that there was a controversy between the empresarios Power and Hewetson, on one side, and Martin de Leon on the other, each claiming a grant including the land in controversy, and that this controversy was decided by the Supreme Executive of Mexico in favor of De Leon, and that decision was carried into effect by the authorities of the State of Coahuila and Texas, and thereby a boundary assigned to the colony of Leon, which included the land herein sued for, such settlement of the controversy will be received as binding and conclusive, and the grant claimed by plaintiff cannot be held invalid either for want of the approval of the Supreme Executive authority of Mexico, or as being without the jurisdiction of De Leon's colony.

8th. That if the jury believe from the evidence that Leonardo Manso was a native Spaniard who emigrated to Mexico in his youth, and before the revolution by which Mexico was separated from Spain, and adhered to the cause of Mexican independence, and became a citizen of the Republic of Mexico, and in the year 1833, or before that time, emigrated to Martin de Leon's colony in Texas, settled in said colony, was received as a colonist and domiciliated therein, and thenceforward until the date of this conveyance remained either in Texas or in Louisiana, without having re-established his domicil in any other part of Mexico, then the said Leonardo Manso was not, up to the date of said deed, an alien enemy to Texas, and his deed to Grayson is not invalid on that ground.

9th. That if Manso's domicil at the date of his conveyance to Grayson was either in Texas or Louisiana, and the jury do not believe from the evidence that he had taken up arms or engaged in the contest against Texas, his mere election to consider and calling himself a citizen of Mexico, would not make him an alien enemy so as to render his said deed invalid on that ground.

10th. That the facts to invalidate a deed on the ground that it is

made between alien enemies as parties prevented from contracting, must clearly and satisfactorily appear to the jury.

11th. That if the jury believe from the evidence that Leonardo Manso was a native Spaniard, who emigrated to Mexico in his youth, and before the revolution by which Mexico was separated from Spain, and adhered to the cause of Mexican independence and became a citizen of the Republic of Mexico, and then emigrated to and acquired the land in controversy in De Leon's colony, in order that there should have been an *ipso facto* forfeiture of said land on the ground of abandonment of the country by said Manso, under the colonization law, it must be proved to the satisfaction of the jury, that prior to the declaration of Independence of Texas on the 2d of March, 1836, the said Manso abandoned and left the country and became domiciliated in a foreign country, without the intention of returning to Texas, or any other part of Mexico, and if his leaving the country was intended to be temporary, and with the design of continuing his allegiance as a Mexican citizen, and returning either to Texas, or some other part of Mexico, it was no abandonment of the country within the meaning of colonization laws, and did not divest his right to his land.

12th. If the jury believe from the evidence that Manso was found to leave the country by the public authorities on account of his being a Gauchapin, and his doing so was not voluntary, it was no abandonment of the country within the meaning of the colonization laws, and did not divest his right to his land.

13th. That the burden of proof is on the defendants, to show a final and complete abandonment of Mexico, prior to the 2d of March, 1836, on the part of Manso, in order that an *ipso facto* forfeiture of his land under the colonization laws should be made out, and the facts on which it is sought to disfranchise a party and to divest his title to property ought to be clearly and conclusively established.

14th. Said Manso, by leaving the country temporarily even to avoid a participation in the struggle impending or apprehended, prior to the adoption of "The Plan and Powers of the Provisional Government," could be subject to no forfeiture, the provisions of the 29th Article of said "plan and powers" being only prospective, and not retrospective in their operation—and the same in regard to the 8th section of the general provisions of the Constitution of the Republic.

15th. Said Manso had a right to adhere to his allegiance to Mexico, and by doing so he did not forfeit his right to his estate within the limits of the Republic.

16th. The conveyance from Manso to Grayson executed in Louisiana before a notary public in conformity to the law, prevailing in civil law countries, does not require further proof of delivery to the party, as the making the agreement before a notary, its reduction to writing, and making a protocal of such writing includes delivery.

17th. If the jury find, from the evidence, that the deed from

Manso to Grayson was made in Louisiana before a notary public, and was executed by the parties, and left with him to become a record of his office, further evidence of the delivery of the said deed is not necessary.

18th. Though White and those claiming under him, may have had more than three years' adverse possession on his third of a league claimed in this action, yet if said third of a league survey conflicted in part only with plaintiff's grant, and there was not an actual adverse possession within the interference of the surveys for three years or more before the commencement of this action, the defendants will not be entitled to the bar of the 15th section of the Act of Limitations.

19th. That if the jury find from the evidence, that on the 10th of August, 1845, White conveyed to Howth twelve hundred acres—the lower part of his headright survey for one-third of a league, and that in the 14th day of October, 1845 White and Howth, then having an interest in said land, entered into an agreement or deed with Jones, the said latter deed may be referred to by the jury, as well to ascertain a relinquishment of any part of the land, as for the statements and declarations of the state of the title at that day.

20th. That the deed from White to Howth made on the 10th August, 1845, being absolute on its own face, operated as a severance of the twelve hundred acres therein conveyed from the remainder of the third of a league lying above, and if the said twelve hundred acres was not at that date protected by three years' adverse possession [as to which the agreement between Jones, White, and Howth, mentioned in the last charge, may be referred to as evidence], any possession of the defendant White thenceforth continuing on the remainder of his $\frac{1}{3}$ league would not be a possession for any of the parties upon said twelve hundred acres. And the jury, to give the defendants the benefit of the statute of limitations, on any part of said twelve hundred acres, must find that they had an actual adverse possession thereof, for three years or more before the institution of this suit.

21st. That in order that a possession outside of the interference between the S. A. White third of a league, and Morales league, by virtue of the survey of the former, should extend over upon the latter, the jury must examine the location and calls of the said survey, and if the location and descriptive calls of the same are so general, and without reference to natural objects, that they would not furnish notice to the owners of the Benito Morales grant of an interference therewith, then the possession outside of the Benito Morales grant will not extend over upon the same.

22d. The defendants are not entitled to a verdict for the value of any improvements unless said defendants had adverse possession of the lands held by them in good faith for at least one year next before the commencement of this action.

23d. By the term good faith is intended a possession held by the party believing himself to be the owner.

24th. If it be proved that the defendants had notice of plaintiff's claim at any time before, or during the period of twelve months next before the commencement of this suit, then such defendants cannot have had adverse possession in good faith, or obtain pay for improvement.

25th. If at the time possession first commenced by the defendants they or either of them under whom the others claimed or held, had notice of the plaintiff's claim, then there could be no possession in good faith in a successor or successors in the possession, by virtue of which the value of improvements might be claimed.

26th. Actual notice of an adverse claim by one in possession, is under the statute entirely inconsistent with a claim in good faith, for the value of improvements made on land in dispute.

27th. If a person makes a location conflicting with a prior claim of which at the time of his location he has notice, and he takes possession of the land embraced by his location, and others take possession under him when he and they are sued, a claim for the value of improvements under such circumstances cannot be set up.

28th. That although a prior grant may not be on file in the land-office, or registered in the county where the land lies, the junior locator will not obtain the best title on the ground of want of notice of the said grant, provided it is delineated on the county map in the surveyor's office, and in the General Land-office.

29th. Nor will such junior locator obtain the best title, provided he has at the time actual notice of such pre-existing grant.

And thereupon the defendants by their counsel prayed the Court to instruct the jury as follows:—

1st. That the colonization laws of Coahuila and Texas did not authorize the commissioner of De Leon's colony to extend to Benito Morales a title for more than one league of land [a league being twenty-five millions of square varas], and the title being upon its face for fifty millions square varas, it was from the beginning null and void, and gives no right to recover.

2. That even if there was authority of law to include the excess of twenty-five millions square varas in the area, and exclude it from the computation because such excess was covered with salt bays as expressed in the grant, yet if the jury believed from the evidence that the reasons were false, and that there was in fact a great excess of land [over and above twenty-five millions square varas] which was not covered with water or salt bays, the grant was void because of the excess, and the jury will find for the defendants.

3d. That the official acts of the various authorities of Coahuila and Texas, and of the Vice President of Mexico show, that the controversy between Power and Hewetson and De Leon as empresarios only related to such conflict as existed between the calls of their

respective grants, between the Nueces and Lavaca rivers, and the documents showing the decisions of the respective governments in relation to their controversy being Alaman's dispatch of Dec'r 23d, 1831, and Letona's dispatch of March 10th, 1832, are to be understood in no other way, than as intending to place De Leon in possession of such lands as were embraced within his two contracts [the first of the date of April 18th, 1824, the other his augmentation contract of April 30th, 1829], and said dispatches, and the law did not authorize the political chief of the department of Bexar, to enlarge or extend those grants, or embrace within De Leon's colony any portion of the coast leagues not properly embraced within his said contracts; and any putting De Leon in possession beyond this would have been without authority, and would not change or enlarge the true boundaries of De Leon's empresa.

4th. That after the national colonization decree of August 18, 1824, and the State colonization decree of March 24th, 1825, and the instructions to the commissioners of the 4th September, 1827, the State had no right to extend to De Leon the right to colonize any portion of the coast leagues without the previous consent of the Federal Executive of Mexico, nor could the commissioners of colonies give possession to any colonist settled, or intending to settle, within the ten literal leagues, unless the persons interested had presented the commissioner a special order of government, wherein the approbation of the National Government to such grant had been manifested. And thereupon, if the jury believe from the evidence, that De Leon had not the consent of the Federal Executive to colonize below the calls of his grant of 1824, as defined by himself in his letter of February 1st, 1825, and agreed to by the government of Coahuila and Texas, and as shown by the decree of said government through Gonzales on the 6th of October, 1825, do not embrace the lands in controversy, then there was no authority in the commissioner to make the grant unless the plaintiff has affirmatively proven a special order of the government, wherein the approbation of the National Government to make the grant, had been manifested; and in the absence of such proof the jury will find for the defendant.

5th. That the report of the Government of Coahuila and Texas transmitted to the President of Mexico dated October 2d, 1826, in which it is stated that the literal leagues lying between the Guadalupe and Lavaca Rivers were vacant, is prima facie evidence of the truth, and the contrary can only be established by proving that the lands so comprehended were the property of individuals, corporations, or towns not subject to colonization.

6th. That the consent of the Republic of Mexico in favor of Power and Hewetson's colonizing said literal leagues between the Guadalupe and Lavaca Rivers, expressed in his dispatch of the 22d April, 1828, and the contract between Power and Hewetson, and the government of Coahuila and Texas on the 11th of June, 1828, gave to

Power and Hewetson the legal and exclusive right to colonize said lands, except so far as they were already the property of individuals, corporations, or towns. And if De Leon's contract of 18th April, 1824, conflicted with any portion of said lands embraced within Power and Hewetson's contract of April 22d, 1828, the law only gave him preference to the extent of said conflict, and the Political Chief of the Department of Bexar could not divest Power and Hewetson's right beyond this conflict, nor vest it in De Leon. And therefore it will be the duty of the jury to ascertain from the evidence, the lower boundary of De Leon's contract or grant of 1824, and if they find that the land in controversy was below said lower line, then there was no power in the Commissioner of De Leon's colony to make the grant, and they must find for the defendants.

7th. It appearing on the face of the conveyance from Leonardo Manso to Peter W. Grayson, that it was made on the 6th day of April, A. D. 1836, between the said Manso, a citizen of the Republic of Mexico, and the said Grayson, a citizen of the Republic of Texas, the States of Mexico and Texas being then engaged in an open and public war with each other, the said conveyance is absolutely null and void, and passed no right of property from the grantor to the grantee therein.

8th. That the contract being in relation to land between citizens of countries then at war with each other, the fact that it was made in the United States, a neutral country, does not take the case out of the rule, but it draws after it all the consequences of the laws of war, and is as void as though it had been made in Texas or Mexico.

9th. That the sale from Manso to Grayson being, as expressed in the deed, between citizens of Mexico and Texas, countries then at war with each other, the contract was contrary to the laws of war governing belligerents, was forbidden by the organic law of Texas, the criminal law of England, which it had adopted, its public policy, good morals, and the duty of Grayson as a citizen of Texas, and was therefore void.

10th. And if the jury believe, from the evidence (and the admissions of the counsel for plaintiff, who opened the cause, in his argument), that, on the 6th of April, 1836, was *bona fide* domiciled in Mexico, as Grayson was in Texas, the character of the country irresistibly attaches to them; and it is perfectly immaterial what was the trade in which Manso was engaged, or whether he was engaged in any occupation in the State of Louisiana, where he was at the time. And if he was settled *bona fide* in Mexico, with the intention of indefinite residence, he was to all foreign countries to be deemed a citizen of that country; when once the permanent domicil is fixed and ascertained, all other circumstances, as to his trade, transitory or fixed character, becomes immaterial.

11th. That if Manso had resided in Texas when the revolution commenced, in 1835, he had the right to make his election, whether he would adhere to his allegiance to Mexico, or adopt the new State

of Texas; and the fact of his election is to be determined by his subsequent acts of declaring in the deed that he was a citizen of Mexico, and by his soon after returning to Mexico, and residing permanently there.

12th. That Grayson and those claiming under him in privity of estate are estopped by the recitals of citizenship in the deed, and no proof of temporary residence in a neutral country, even if it had been made, could be allowed to contradict their own solemn act.

13th. That if the jury believe, from the testimony, that Leonardo Manso purchased the land in controversy from the colonist who obtained the title under the colonization laws of Mexico, and Coahuila and Texas, and afterwards, in 1835, abandoned the country, and went to reside in a foreign country, and became domiciliated there before the sale, the land thereby vacated to the public domain, and became entirely vacant, and consequently on the 6th day of April, A. D. 1836, Manso had nothing to sell to Grayson, and nothing passed by his deed of conveyance of that date.

14th. That the deed from Manso to Grayson not having been executed with the forms and solemnities, and before an officer authorized by law to execute a public instrument, did not pass the legal estate in the land so as to enable the plaintiff to maintain ejectment, and the mere proof of its execution does not determine the legal effect; therefore, the chain of the plaintiff's title is incomplete, and the plaintiff has no right to recover.

15th. That the said deed from Manso to Grayson, not having been recorded before the defendants, White and Cook, had acquired title under the Government, by virtue of their location and surveys, and the locations and surveys of Fielding Jones and Thomas Wilson; the title to Morales cannot now be set up to defeat the subsequently acquired title and possession under said locations and surveys.

16th. That if the jury believe, from the evidence, that the original grant (called the matrix or first original) from Fernando de Leon, commissioner, to Benito Morales, had not been deposited in the General Land-office as an archive, as required by the constitution and laws, and that the testimonio had not been recorded in the county where the land lay, before the date of the locations by the White, Wilson, and Fielding Jones certificates and the surveys thereof, and that the defendants respectively had no actual notice of the said grants, then the defendants, without actual notice, acquired a right under said locations superior to said grants, and as to such defendants the plaintiff cannot recover.

17th. That even if it had been proven to the satisfaction of the jury that the name of Benito Morales was designated upon the county map of Victoria County, and said map transmitted to the General Land-office by the surveyor of the district, yet if upon examining the General Land-office and the district surveyor's office, no corresponding archive could be found to support such designation, and if no record of such title existed in the proper county, the loca-

tors were not charged with the notice by mere designation upon the map; and by the locations and surveys they acquired a superior right to such original grant, and the jury must find for the defendants to the extent of such locations and surveys.

18th. That even if the locators could be chargeable with any notice other than the archives of the Land-office, and the record notice, the purchasers under them are not chargeable with such actual notice, and such purchasers are protected by the non-record of the title.

19th. That the law of registration applies as well to the mere conveyances as to the original grants, and the failure to duly and legally register the chain of mesne conveyances in Victoria or Calhoun Counties (if the jury believe from the evidence that there was no legal registration) is a postponement of the plaintiff's title in favor of those subsequently locating, and surveying, and those claiming under them, and such locations and surveys must protect the defendants as to the extent of said surveys.

20th. That the contract of the 14th day of October, 1845, between White, Howth, and Jones, was only a declamation of a readiness on the part of White and Howth to relinquish and transfer to Levi Jones, all the right, title, interest, claim, and possession, which they, or either of them, had at that time in and to all the lands described in said conveyance, by virtue of any location, survey, or conveyance, upon his, said Levi Jones, agreeing, as he thereby did agree, that he would pay said Howth the sum of two thousand dollars, with interest thereon, in the manner and by the time therein expressed; and unless the jury believe from the evidence that the said sum has been paid before the commencement of this suit, and said relinquishment had been made, and said possession surrendered, then the possession of said White was uninterrupted by, and he and those claiming under him by virtue of his location and survey, if in possession, were in adverse possession.

21st. And should the Court instruct the jury that the agreement between White, Howth, and Jones, was a present conveyance from White and Howth to any interest which they then had under said locations and surveys—nevertheless, if said White had, before that time, been residing upon his own headright—he was in possession adverse to the plaintiff, and the alienation or relinquishment to Levi Jones, did not inure to the benefit of the plaintiff, and, at most, would only transfer the right of said adverse possession to Levi Jones, and the possession of White after that time, if it could inure to the benefit of Jones, could not inure to the benefit of the plaintiff.

22d. That the jury are to determine, 1st, whether these witnesses [José M. J. Carvajal, John J. Linn, Edward Linn, and Fernando de Leon] establish the existence of any papers not before them. 2dly. What are the contents of said papers? And 3dly. Whether the facts thus sworn to are consistent with the law and the document-

ary evidence; and if not, then such parol evidence is to be disregarded.

23d. That if the jury believe, from the evidence, that the defendant, Samuel A. White, and the defendants claiming under him, had been in possession of said league of land, or any part thereof, under and by virtue of the location and survey of White's headright certificate for three years next before the commencement of this suit, then said White, and those claiming under him, are protected under said location and surveys, to the extent of the boundaries thereof, and the plaintiff cannot recover any part of said third of a league.

24th. That the circumstance that White's whole survey did not conflict with the claim of the plaintiff, and that White may not have resided upon the part of his survey in conflict with the plaintiff, does not impair his right to protection to the full extent of his boundaries, by virtue of his said survey, but the actual and notorious possession of any part of the premises, and a claim to the extent of his boundaries, is, by law, construed into possession of the whole extent of his survey.

But the said Court gave the following instructions, prayed for by defendant, to wit:—

1st. That if the jury believe, from the evidence, that the land in controversy was not embraced within the boundaries of Martin de Leon's colonial contracts of April 18th, 1824, or of his augmentation contract of April 30, 1829, then there was no authority in the Commissioner of De Leon's colony to extend the title, and it is null and void.

2d. That in determining the boundaries specified in these contracts, the jury will examine the calls in said contracts and documents themselves, and then determine for themselves whether the witnesses acquainted with the calls in the grants proved that the land in controversy was without these boundaries, and if so, then they will find for the defendants.

3d. That the evidence of the witnesses as to the acts of the Political Chief of Bexar can only be understood as proving such acts as he could lawfully do: but in so far as it proves acts beyond the authority transmitted to him, and the law, arising out of the documentary evidence before the jury, such evidence is to be disregarded.

4th. It appearing on the face of the conveyance from Leonardo Manso to Peter W. Grayson, that it was made on the 6th day of April, A. D. 1836, between the said Manso, a citizen of the Republic of Mexico, and the said Grayson, a citizen of the Republic of Texas, the said states of Mexico and Texas being then engaged in open and public war with each other, the said deed of conveyance is absolutely null and void, and passed no right of property from the grantor to the grantee therein, unless the jury should find from the evidence that the said Leonardo Manso was, at the time of making

in this behalf, do command you, if judgment be therein given, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the said record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twenty-second day of March, in the year of our Lord one thousand eight hundred and fifty-six, with seal of Court.

[SEAL.] JAMES LOVE,
Clerk U. S. Dist. Court, District of Texas.

And afterwards, to wit, on the same day and year, citation was issued in the words and figures following, that is to say:—

Citation in Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to Albert T. Burnley, greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the District of Texas, at Galveston, wherein Samuel A. White, William M. Cook, John H. Baldwin, Henry J. Huck in his own right and as administrator of Herman H. Rodgers, deceased, Oliver H. Stapp, Thomas Rooke, William C. Blair administrator of Chambers Etler, deceased, and Agatha O'Brien, widow, and administratrix of John P. O'Brien, deceased, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this twenty-second day of March, in the year of our Lord one thousand eight hundred and fifty-six.

JOHN C. WATROUS.

I acknowledge service of the within citation, June 25, 1856.

W. P. BALLINGER,
Attorney for Burnley.

THE UNITED STATES OF AMERICA,
DISTRICT COURT OF THE UNITED STATES,
District of Texas, at Galveston:
To wit.

I, James Love, Clerk of the District Court of the United States of America in and for the district of Texas, certify: That the foregoing two hundred and fifty-eight pages, exclusive of the index and this certificate, contain a true and perfect transcript of the record and proceedings had in the cause of Albert T. Burnley against Samuel A. White and others, number two hundred and thirteen on the law docket of said Court; and that the erasures and interlineations herein were made before signing this certificate.

In testimony whereof, I hereunto set my hand and affix the seal of said Court. Done at the city of Galveston, this fifth day of August, in the year of our Lord one thousand eight hundred and fifty-six, and the eighty-first year of the Independence of the United States of America.

[SEAL.] JAMES LOVE,
Clerk.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Honorable the Judge of the District Court of the United States for the District of Texas, greeting:—

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between Albert T. Burnley as plaintiff, and Samuel A. White, William M. Cook, John H. Baldwin, Henry J. Huck in his own right, and as administrator of Herman H. Rogers, dec'd, Oliver H. Stapp, Thomas Rook, William C. Blair, administrator of Chambers Etler, deceased, and Agatha O'Brien, widow and administratrix of John P. O'Brien, deceased, defendants, a manifest error hath happened to the great damage of the said Samuel A. White, William M. Cook, John H. Baldwin, Oliver H. Stapp, Thomas Rooke, Henry J. Huck, in his own right, and as administrator of Herman H. Rogers, deceased, William C. Blair, administrator of Chambers Etler, deceased, and Agatha O'Brien, widow and administratrix of John P. O'Brien, deceased, as by their complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, so command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the

said Supreme Court to be then and there held, that the said record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this twenty-second day of March, in the year of our Lord one thousand eight hundred and fifty-six. With seal of Court.

JAMES LOVE,
Cl'k U. S. Dist. Court, Dist. Texas.

Allowed by

JOHN C. WATROUS,
Judge of the District Court of the U. S. for Dist. of Texas.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to Albert T. Burnley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Texas, at Galveston, wherein Samuel A White, William M. Cook, John H. Baldwin, Henry J. Huck, in his own right, and as administrator of Herman H. Rogers, deceased, Oliver H. Stapp, Thomas Rook, William C. Blair, administrator of Chambers Etler, deceased, and Agatha O'Brien, widow and administratrix of John P. O'Brien, deceased, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this twenty-second day of March, in the year of our Lord one thousand eight hundred and fifty-six.

JOHN C. WATROUS.

SAMUEL A. WHITE, WILLIAM M. COOK, and others
vs.
ALBERT T. BURNLEY.

Citation in Error.

I acknowledge service of the within citation.

W. P. BALLINGER,
Attorney for Burnley.

Galveston, *June* 25, 1856.

THE STATE OF TEXAS,
County of Galveston.

Know all men by these presents, that I, S. A. White, a citizen of said State and County of Victoria, reposing special trust and confidence in Joseph F. Smith, a citizen of said State and County of Victoria, do, by these presents, nominate, constitute, and appoint him my agent and attorney in fact, to sign my name to any bond of appeal from the decisions of the District Court of the United States of America in and for the District of Texas, to the Supreme Court of the United States of America, in any case in said Court in which I am a party, or in any case in which said Smith is a party, that may be necessary to take up said case or cases to said Supreme Court by writs of error, so that said case or cases may be revised by said Supreme Court, and do all things to perfect said appeals or writs of error, that I could legally do were I personally present; and I will forever acknowledge his acts in the premises to be binding upon me.

March 1, A. D. 1856.

S. A. WHITE.

Witnesses,
JOHN S. JONES and WM. M. COOK.

UNITED STATES OF AMERICA,
District of Texas.

Before me, John S. Jones, a Commissioner of the United States for the District of Texas, personally appeared S. A. White, to me known, who acknowledged that he signed, executed, and delivered the within document as his act and deed, for the purposes therein set forth and declared.

Witness my hand, and *and* private seal (having no seal of office), this the 1st day of March, A. D. 1856.

JOHN S. JONES,
U. S. Commissioner.